Supreme Court, U.S.
FILED
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No. 091074

SUPREME COURT OF THE UNITED STATES
October Term, 2010

John C. Justice and Mike Woodward,
Petitioners,

v.

THE TOWN OF CICERO,
Dennis Doe,
Jerry J. Jarosz, and
One to Two Dozen Unnamed or Unknown
Employees of the Town of Cicero,
Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

John C. Justice,
in propria persona
1699 South 55th Ave.
Cicero, Illinois 60804
708-656-3250

Mike Woodward,
in propria persona
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QUESTIONS PRESENTED FOR REVIEW

1. Is the Second Amendment to the Constitution for the United States violated when a State or its subdivisions requires registration of arms?

2. Is the Fourth Amendment to the Constitution for the United States violated when the police of the Town of Cicero invade an area that was not included in the administrative search warrants for the sole purpose of seizing articles that are not prohibited by law?

3. Is the Fifth Amendment right to due process violated when the rules of the Circuit Court of Appeals for the Seventh Circuit do not allow parties represented by counsel to plead concurrently and do not address the pleadings filed by the plaintiffs?

4. Is the Ninth Amendment to the Constitution for the United States violated when a municipality demands that an American citizen be licensed to engage in his own private business?

5. Is a right to privacy protected under the Ninth Amendment to the Constitution for the United States violated when police invade a closed room, wake a sleeping man by playing their pistols' laser sights on his eyes and evict him from a building in which he was welcomed by the owner to stay and to protect?

List of All Parties

The parties to the action in the District Court were:
John Justice and Mike Woodward, Plaintiffs

and

The Town of Cicero, Dennis Doe, Jerry J. Jarosz, and One to Two Dozen Unnamed or Unknown Employees of the Town of Cicero, Defendants

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Opinions Below

The Memorandum Opinion and Order of the United States District Court for the Northern District of Illinois, Eastern Division, filed October 10, 2007, in case #06-C-1108, granting defendants' motion to dismiss the complaint under FED. R. CIV. P. 12(b)(6).

An Order denying a motion to reconsider was filed November 16, 2007.

The Opinion of the United States Court of Appeals for the Seventh Circuit, in case #07-3990, decided August 14, 2009, affirming the Memorandum Opinion of the District Court.

The Order of the United States Court of Appeals for the Seventh Circuit, issued September 22, 2009, denying rehearing en banc.

Jurisdiction

The Opinion of the Seventh Circuit sought to be reviewed was filed August 14, 2009. The Order denying the petition for rehearing *en banc* was filed September 22, 2009.
The Clerk allowed 60 days from January 6, 2010, to correct deficiencies in the Petition filed December 21.

This Court has jurisdiction to review the issues under 28 U.S.C. § 1254(1).

Federal Constitutional and Statutory Provisions Involved

Preamble to the Constitution for the United States of America

"**We the People of the United States**, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." (Emphasis added.).....5

4. The Constitution for the United States of America, Article III, § 2, reads in relevant part: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution.....xii, 1

1. The Constitution for the United States of America, Article. V., ...5

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, ***shall be valid to all Intents and Purposes, as Part of this Constitution***, when ratified by the Legislatures of three fourths of the

several States, or by Conventions in three fourths thereof, as the one or other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate. (Emphasis added.)

The Constitution for the United States of America, Article. VI. Clause 2, ...6

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, ***shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding***. (Emphasis added.)

The Constitution for the United States of America, Amendment II. .....i, ix, 3, 4, 8
A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

The Constitution for the United States of America, Amendment IV. .....ii, 9
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable

searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and ***particularly describing the place to be searched, and the persons or things to be seized.*** (Emphasis added.)

The Constitution for the United States of America, Amendment V. , reads in relevant part: "No person shall be...deprived of life, liberty, or property, without due process of law...." .....ii, 7, 8, 9

The Constitution for the United States of America, Amendment IX.
The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.
.....ii, 6, 7, 8

Federal Law 18 U.S.C. 926 (2) (a): No such rule or regulation prescribed after the date of the enactment of the Firearms Owners Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or disposition be established. Nothing in this section expands or restricts the Secretary's authority to inquire into the disposition of any firearm in the course of a criminal investigation.

Report of the Subcommittee on the Constitution of the Committee on the Judiciary, United States Senate, 97th Congress, Second Session (February 1982), a bipartisan subcommittee (consisting of 3 Republicans and 2 Democrats) of the United States Senate investigated the Second Amendment and reported its findings. The report stated:

The conclusion is thus inescapable that the history, concept, and wording of the second amendment to the Constitution of the United States, as well as its interpretation by every major commentator and court in the first half century after its ratification, indicates that what is protected is an individual right of a private citizen to own and carry firearms in a peaceful manner.

STATE CONSTITUTION CITED

Constitution of the State of Illinois, Article XII

"**§ 1. Membership.**

"The State militia consists of all able-bodied persons residing in the State except those exempted by law."

TOWN ORDINANCES INVOLVED IN THE CASE

DIVISION 3. REGISTRATION OF FIREARMS

Sec 62-256. .....Appendix A-152

Chap. 26 (Businesses), Division 1 (General), Sec. 26-31. *et seq.* in pertinent part

[Business License] .....Appendix A-176

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STATEMENT OF THE CASE

John C. Justice and Mike Woodward are plaintiffs in an Article III complaint filed against the Town of Cicero and employees who invaded Justice's building on Friday, February 24, 2006, with the intent of doing as much damage to Justice as possible. Justice had moved his business, Microcosm, Inc., to Cicero in 1976, buying a 25000 square foot building under a contract sale, the terms of which have long since been satisfied. In 1980 Justice stopped doing business under the limited

liability of a corporation and became a sole proprietor doing business as Microcosm, an assumed business name as provided in the Illinois statutes to protect customers against fraud. At the same time he no longer was licensed by the Town of Cicero, relying on this Court's teaching regarding privileges and rights in *Hale V. Henkel,* 201 U.S. 43, 26 S.Ct. 370, 50 L.Ed. 652 (1906).

When employees of the Town of Cicero came to the door of his building in January or February of 2006, stating that Justice did not have a business license, Justice replied that he did not need a license; that he was doing business as a matter of liberty under the Declaration of Independence and the Constitution for the United States of America. The manager of the Business License Office of the Town came and was told the same thing. Three tickets were issued and Justice responded under Special Appearance in the Town court. [App. A-99] The manager of the Business License Office came again and was told again that Justice was doing business as a matter of liberty under the Declaration of Independence and the Constitution for the United States of America.

The third time was a charm and a swat team descended with a swarm of inspectors, two attorneys, and half a dozen to a dozen uniformed and plain-clothed police.
They ordered that work be stopped, causing damage that required a day to clean up, and ordered everyone except Justice and Woodward to leave.

The police had gone upstairs and rousted

Plaintiff Woodward from sleep, seized the shotgun that was beside his bed, and brought him downstairs in handcuffs, calling him "a stupid Christian loser." Defendant Dennis Doe led Justice throughout the building pointing out items that he judged to be unsafe, accusatorially demanding Material Safety Data Sheets, and calling the Environmental Protection Agency and the Occupational Safety and Health Administration to try to embroil Justice in further problems.

The police demanded that Justice go with them to the Town Hall and get a receipt for the seized shotgun. Justice, in shock from the invasion of his property, went under duress with them and was taken out in handcuffs in view of neighboring businesses and houses, and placed in one of the line of police cars that stretched the length of front of the building, some 150 feet.

Justice was taken to the police department and was told by the two policemen on the way, we "don't blame you for having guns; we can't be everywhere to protect you," and, "you can have all the guns you want; you just have to pay us to register them." Justice was questioned by a lieutenant or captain, who asked if he had any more guns. Justice replied that he believed he had been told that he did not have to respond to questions. The officer immediately told the arresting police, "I want you to go back over there and tear that place apart." They went back and kept Woodward seated in a corner where he could not see them and ransacked Justice's property, seizing fourteen arms of various kinds

listed on a receipt which was given to Justice when he was turned out the door twelve hours later. Woodward had been ordered to secure the building and leave after their unwarranted search and seizure was ended. He had no place to go and it was mid-winter.

The police stretched yellow crime-scene tape across the front of the building and posted signs which read, "Closed by order of the Town of Cicero."

Justice decided that he had no choice but to apply for a license from the Town and went to the Business License Office on Monday, February 27. He asked for an application and without any exchange of information was told, "There is a fifty dollar fee for filing the application; it'll take two to three weeks to get out of [the] legal [department]...*IF* they let you open again at all." Justice perceived their strategy and drafted a complaint and filed it on Tuesday, February 28, in the United States District Court for the Northern District of Illinois, Eastern Division, alleging violations of Constitutionally secured rights under the Court's diversity jurisdiction.

Justice is a resident of the State of Tennessee who has business interests in other States including the primary business which was invaded by the Town of Cicero, and Woodward is a resident of the State of Utah.

The Court erred in dismissing Justice and Woodward's case because the Motion to Dismiss was improper:

1. There is a genuine controversy.

2. The District Court did not construe the facts in our favor under Rule 12(b)(6).

3. If the District Court had done so, the case would not have been dismissed.

ARGUMENT

The Plaintiffs had standing to bring their cause before the District Court as an Article III court, as set forth in ***Lujan v. Defenders of Wildlife***, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992):

> "Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements: First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally-protected interest which is (a) concrete and particularized, see *id. (Allen v. Wright,* 468 U.S. 737), , at 756, 104 S.Ct., at 3327; *Warth v. Seldin,* 422 U.S. 490, 508, 95 S.Ct. 2197, 2210, 45 L.Ed.2d 343 (1975); *Sierra Club v. Morton,* 405 U.S. 727, 740-741, n. 16, 92 S.Ct. 1361, 1368-1369, n. 16, 31 L.Ed.2d 636 (1972); [1] and (b) "actual or imminent, not 'conjectural' or 'hypothetical,' " *Whitmore, supra,* 495 U.S., at 155, 110 S.Ct., at 1723 (quoting *Los Angeles v. Lyons,* 461 U.S. 95, 102, 103 S.Ct. 1660, 1665, 75 L.Ed.2d 675 (1983)). Second, there must be a causal connection between the injury and the conduct complained of; the injury has

> to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 41-42, 96 S.Ct. 1917, 1926, 48 L.Ed.2d 450 (1976). Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Id.*, at 38, 43, 96 S.Ct., at 1924, 1926. "

As to the first element of an Article III complaint under ***Lujan v. Defenders of Wildlife***, the Appellants were engaged in legally protected interests. Justice was engaged in the use of his property and Woodward had Justice's permission to be within the confines of his property. Secondly, Justice lost business at that time and suffered the loss of the use of his property, the loss of the continuing expenses of building utilities and real estate taxes, the moral obligation to pay the workers who produce the goods which he buys, converts, and sells while the Town of Cicero had exercised its unconstitutionally unlimited powers and sealed his building. Woodward no longer has a place to stay and has returned to Utah. Thirdly, if the Court upholds the dismissal of the Appellants' complaint, Justice will be returned to the tender mercies of the Town of Cicero.

THE SECOND AMENDMENT and REGISTRATION

This Court in the case of *D.C. v. Heller*, 128 S. Ct. 2783 (2008) held that "The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." Despite this "victory" for Heller, when he went to the City Fathers to register a pistol for self-defense within the home, they had immediately after this Court's ruling passed an ordinance attempting to be restrictive as possible.[1]

Following the Heller opinion, suit was filed in Chicago by Otis McDonald *et al.*, ~~against whom the petitioners in this case cross-petition under Rule 12.5~~, on the grounds that Heller and they have sought a ruling on the Second Amendment that infringes upon it, and, among the *amici curiae*, specifically the Jews for the Preservation of Firearms Ownership (JFPO), they and all of them have pleaded for registration of arms, which the petitioners in this case contend is an infringement, leading to confiscation and genocide as taught in *Death by Gun Control* and the documentary DVD, *Innocents Betrayed*, both published by JPFO. The

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[1]The newspaper article about the beginning of the registration effort following the Opinion is linked here: http://www.usatoday.com/news/washington/2008-07-17-dc-guns_N.htm

latter was filed as part of Justice and Woodward's pleadings as R.68 and R.69 in the District Court. [See App. A-24 and A-28.]

One only gets what he asks for and the maxim, "Be careful what you pray for; you may get it!" applies unequivocally here. Registration of arms is an unspeakable evil, and is a prelude to confiscation; an infringement of a right secured under the Second Amendment.

In, *e.g.*, *Death by Gun Control* at p.145, Zelman and Stevens cite the laws propounded by the Turkish government requiring registration of all arms including daggers.2 Having had all the Armenian young men, drafted into the Turkish army, stack their arms and march off to be executed, the defenseless old men, women, and children were summarily ethnically cleansed. (*Ibid.*, pp.142-144) The book has ten chapters regarding countries where registration has preceded confiscation. To think that JFPO's *amicus curiae* brief would now support McDonald's petition to register his firearm (allegedly kept outside the City of Chicago) is unthinkable ~~and a cross-petition against the lot, from McDonald through the *amici*~~, though their scholarship and briefs are fascinating~~, must be heard by this Court~~.

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[2] Who is to say that the 1.5-inch fingernail clipper confiscated from petitioner Justice at DFW by security when airlines began flying after 9/11 would not be considered a "dagger"?

McDonald and the *amici curiae* are arguing *inter alia* that the Second Amendment should be enforced within the States under the Fourteenth. This position arises from the opinion of Chief Justice John Marshall, a non-attorney, in *Barron v. Baltimore*, 32 U.S. 243 (1833) who declared that the Amendments to the Constitution applied to the federal government, not to the States. This is patently untrue but has been effected as the rule until the Fourteenth Amendment.

The Preamble to the Constitution begins:

> **"We the People of the United States**, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." (Emphasis added.)

There follows in Article V, in pertinent part,

> "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention

> for proposing Amendments, which, in either Case, ***shall be valid to all Intents and Purposes, as Part of this Constitution***, when ratified .." (Emphasis added.)

And in Article. VI. Clause 2, the Supremacy Clause,

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, ***shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding***." (Emphasis added.)

It is obvious from the construction of these three portions of the Constitution that We the People have ordained and established the Constitution, the properly ratified Amendments are part of the Constitution, and the whole of the Constitution is binding upon the States and protects the People, who have rights guaranteed by the Amendments with or without the Fourteenth because the Constitution and its Amendments are the Supreme Law of the land, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding, including the ordinances of the Town of Cicero, and

the City of Chicago. *Haywood v. Drown*, No. 07-10374 (U.S. 5/26/2009) (2009)

THE NINTH AMENDMENT

The rationale for understanding the acts of the Town of Cicero are understandable under the Hegelian *Herrschaft und Knechtschaft* concept.3 Our public servants have become our masters. The peoples' rights under the Ninth Amendment have largely been forgotten by our servants and they must be re-reminded of this Court's many decisions on this subject.
(*The Forgotten Ninth Amendment*, by Bennett B. Patterson)

Mike Woodward's rights to privacy protected under the Ninth Amendment were violated when police from the Town of Cicero invaded his room.

Woodward and Justice were both experienced from childhood with the use of arms and both were trained by the United States Army in handling arms. We never intentionally point a weapon at anyone we do not intend to kill or injure for the obvious reason that fatal accidents can and do

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[3]http://en.wikipedia.org/wiki/Master-slave_dialectic

happen:
Everybody knows that the gun ain't loaded.
Everybody knows that the safety's set.
Everybody knows it won't go half-cockéd.
Everybody knows 'twas an ac-ci-dent.4

Police awakened Woodward by playing the laser sights of their pistols on his eyes. Anyone among the gun-banning activists should be shocked by such an act, unless they are so devoted to the establishment of government supremacy over the sovereign citizenry that they applaud it. This constituted reckless endangerment of Woodward, and exacerbated the Town's violations of his rights under the Ninth Amendment.

Justice's assertion that he did not need a business license; that he was doing business as a matter of liberty under the Declaration of Independence and the Constitution (R.1) was an assertion of a right secured under the Ninth Amendment. It was a fighting clause, much as described by the Court in *United States v. Johnson* in a case involving the Fifth Amendment: "The privilege against self-incrimination is neither accorded to the passive resistant, nor the person who is ignorant of his rights, nor to one indifferent thereto. It is a fighting clause. Its benefits can be retained only by sustained

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[4] http://www.last.fm/music/Leonard+Cohen/_/Everybody+Knows Adapted with apologies to Leonard Cohen.

combat. It cannot be claimed by attorney or solicitor. It is valid only when insisted upon by a belligerent claimant in person. (Cites deleted.) The one who is persuaded by honeyed words or moral suasion to testify or produce documents rather than make a last ditch stand, simply loses the protection. Once he testifies as to part, he has waived his right and must on cross examination or otherwise, testify as to the whole transaction. He must refuse to answer or produce, and test the matter in contempt proceedings, or by habeas corpus." *United States v. Johnson*, 76 F.Supp. 538, 540 (M.D. Pa., 1947) Cited in United States v. Willis, 145 F.Supp. 365 (M.D. Ga., 1955) and United States v. Judson, 322 F.2d 460 (9th Cir., 1963)

Under such reasoning, *Miranda v. State of Arizona* 384 U.S. 436 (1966), would fail for Miranda's failure to have asserted his rights against self-incrimination. Perhaps government should "mirandize" the sovereign citizens of the United States, advising them that they have rights that are enumerated in the Constitution and others that are retained by the people that cannot be denied or disparaged under Amendment IX.
Plaintiff Justice has asserted such a right secured under the Ninth Amendment and Plaintiff Woodward's privacy and life were violated under rights secured under the Ninth Amendment. This Court should grant the writ to address these issues.

The Second Amendment should really be the First, because without the right of the people to keep and bear arms, ultimately none of the other Amendments can be defended. Registration of arms is a prelude to confiscation and genocide, and as an infringement of the Second Amendment, this Court should declare so in no uncertain terms.
Concurrently with this petition for Writ of Certiorari, the case of *Otis McDonald v. City of Chicago*, No. 08-1521, is before this Court, arguing with *Amici Curiae*, contrary to positions held in the writings and documentaries of one of the Amici, the Jews for the Preservation of Firearms Ownership. Registration of arms is and has been prohibited under 18 U.S.C. 926 (2) (a) as set forth at page ix. This Court should grant the writ ~~under cross-petition~~ to address this infringement of rights secured under the Second Amendment.

The Fourth Amendment provides that search warrants ***particularly describe the place to be searched, and the persons or things to be seized***. The attorneys who prepared the administrative search warrant addressing purported business violations did not allege any violations of firearms "laws". The warrantless and unwarranted general search and seizure conducted by the police who invaded areas not included in the administrative search warrant must be condemned as violative of the Fourth Amendment and the property that they seized must be ordered returned. This Court should

grant the writ to address this unwarranted expansion of an "administrative search warrant" into a General Warrant, prohibited by the Fourth Amendment.

The Fifth Amendment provides in relevant part that "No person shall be...deprived of life, liberty, or property, without due process of law...." In addition to the violations of the Fifth Amendment by the Town of Cicero and its employees, the United States District Court for the Northern District of Illinois following the Opinion of the United States Court of Appeals for the Seventh Circuit in *U.S.A. v. Oreye*, 263 F.3d 669 (7th Cir., 2001), and the full panel of the Seventh Circuit in denying rehearing, did not address pleadings filed by the plaintiffs themselves and denied Justice and Woodward due process of law. Any issue not raised is considered waived. *Boyers v. Texaco Refining and Marketing, Inc.*, 848 F.2d 809, 811-812 (7th Cir. 1988) Plaintiffs' Reply Brief, filed as prescribed by rule with the requisite number of copies and a DVD containing files in .pdf format was never entered into the record accessible through Pacer after the Plaintiffs requested that their hired counsel withdraw and they filed their own brief. Again, neither the Trial Court nor the Court of Appeals for the Seventh Circuit addressed the pleadings filed by the Plaintiffs themselves. Justice and Woodward's rights to due process have been denied, because, although many issues were raised by the plaintiffs in violation of the Seventh

Circuit's rule in *Oreye*, the issues were not addressed by the trial court, or on appeal.

> "It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us." *Cohens v. Virginia*, 19 U.S. 264, 404 (1821)

CONCLUSION

Wherefore, Petitioners Justice and Woodward pray this Honorable Court grant the writ.

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APPENDIX

Document 1 in the Trial Court:
Original Complaint
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

John C. Justice and
Mike Woodward,
Plaintiffs

vs.

THE TOWN OF CICERO,
Dennis Doe,
Jerry J. Jarosz,
One to Two Dozen Unnamed or Unknown
Employees of the Town of Cicero, and Other
Defendants to be joined,
Defendants.

CASE NO: 06C-1108

JUDGE WAYNE ANDERSEN

MAGISTRATE JUDGE
GERALDINE SOAT BROWN

COMPLAINT

The Town of Cicero began a campaign of getting license fees from businesses operating within the Town's borders. Two employees of the Town, in

Defendant Jerry J. Jarosz' Business License Department, knocked at the door of Plaintiff Justice's building (hereinafter "Justice") and demanded entry. Justice told them that he did not need a license; that he was a private citizen doing business as a matter of liberty under rights secured by the Declaration of Independence and the Constitution for the United States of America. Defendant Jarosz was called in and denied entry also. He returned later bearing three tickets issued to "Micro Sol, Inc" that had a court date in the Town Hall on or about February 16, 2006.

Justice appeared by Special Appearance under 735 ILCS 5/2-301 in the court and after telling the judge that he had no relationship to "Micro Sol, Inc.," he was dismissed from the case and the Town attorney was instructed by the judge to look for "this Micro Sol, Inc., find out what their assets are, and lien them!" The Town attorney said, "I'll do it right away. We'll file liens with the Recorder of Deeds." Justice was dismissed and the tickets were taken back by the clerk.

Defendant Jarosz returned again following the dismissal of the first court appearance. For a third time Justice told Jarosz or his employees that as a matter of liberty he did not have to pay for the right to work; that it is not a privilege to work in the Town of Cicero and that he is not engaged in any activity which would require permission. The vindictive wanton, reckless, and malicious response of Defendants Jarosz and Town of Cicero violated Justice's rights to life, liberty, and the pursuit of happiness.

On Friday, February 24, 2006, the Town of Cicero by its employees Dennis Doe ***et alii***, accompanied by a dozen or more uniformed and plainclothes police of

the Town, including two or more with the rank of lieutenant, forced their way into the property of Plaintiff John C. Justice bearing a purported administrative search warrant shortly before nine o'clock in the morning.

Work had been in progress since six o'clock that morning. The agents ordered immediate stoppage of work which resulted in destruction of material and will require arduous labor to clean the mess they caused. There will be damage and loss to the customer who receives the product that was being made and loss to the customers from delayed shipment of expected goods which would have been delivered on schedule but now are at this point half a week late.

The agents of the Town of Cicero ordered all the production workers to leave their work, brought them into the office, and demanded their names and addresses. They then ordered them to go home, telling them that the building would be closed.

The police of the Town of Cicero went to an upstairs room and, with handguns drawn and laser sights turned on, aimed their weapons at the head of the night watchman, Mike Woodward, and awakened him, rousting him from his sleep and ordering him downstairs while Officer Vargas, one of the hitherto unnamed defendants, ridiculed him as a "dumb Christian loser." The police officers had jerked the covers off him, waited for a response and then one said, "Take it easy; we're police." The police officers gave him conflicting orders, one telling him to move and another telling him the contrary. One of the police officers had, in addition to his large caliber semi-automatic pistol in a holster on his belt, a similar pistol in his pocket which can be surmised to have

been there for nefarious purposes. These acts and subsequent acts by the police officers of the Town of Cicero were reckless, wanton, and malicious, intended to intimidate Plaintiff Woodward, and to strike fear into him, and possibly to evoke a response from him that would colorably justify killing him.

The reckless, wanton, and malicious acts of the police officers of the Town of Cicero endangered his life.

One of the agents of the Town of Cicero ordered the foreman to call Plaintiff Justice and tell him to get over to the building. Justice arrived to find that all the automobiles of the workers had been surrounded by police cars and SUVs and both docks were blocked to prevent entry or exit. Their reckless, wanton, and malicious display was intended to give notice to neighbors and the community in general that Plaintiff Justice had committed some kind of crime to evoke such a massive police presence.

Justice was served a copy of the administrative search warrant which he was not allowed time to read. It was in a small type font which is beyond his capability of reading easily. He was commandeered by Defendant Dennis Doe and accompanied Doe on an inspection of the building. Justice demanded that everyone stick together but was rebuffed by Doe who said, "They are the police; they do what they want to." The police ranged far and wide, converting the administrative search warrant into a general warrant. They grilled the night watchman, Plaintiff Woodward, and carried the shotgun he had had beside his bed with them, waving it recklessly in a manner that caused one of the elder workers to blanch and turn to a sickly shade of gray. The foreman admonished the policeman to stop pointing the weapon in their

direction. His acts were reckless and wanton and endangered the lives of the arrestees.

Defendant Doe was looking for anything that he could find to make the inspection grounds for closing the business. When he first addressed Justice, he demanded to see MSDS's, Material Safety Data Sheets, for "all the chemicals you have here." Justice went to a file drawer and pulled out alphabetized file folders of MSDS's which measure a compressed 7 inches in thickness. Defendant Doe did not examine them.

Defendant Doe led Justice on an inspection tour of the building. He announced that he was calling in "the big guns, OSHA and the EPA; they've got to see what kind of chemicals you have here."

An amended Administrative Search Warrant was handed to Justice which had been modified to include 1801 South 55th Avenue, the address that the County of Cook has for real estate tax records, as the address of the building in addition to 1699 South 55th Avenue. Justice had no opportunity to read either one, or compare them for differences. He left them on a table at the entrance of the building and they were taken by the Defendants. Their wanton acts deprive Justice of any way of knowing whether the warrants were valid or otherwise subject to objection.

The police told Plaintiff Justice that he must accompany them to the station to get a receipt for the shotgun. They assured him that he would be out and back in a few minutes. Justice had repeatedly objected that his right to keep and bear arms is secured under the Second Amendment to the Constitution for the United States of America. The police said he could have all the guns he wanted; he just had to register

them and pay a fee. Now, they said, he would have to register, pay a fee, and pay a fine for not having registered them. They found a small caliber pistol also and handcuffed Justice tightly and walked him out to the squad car with his hands behind his back in plain view of next door neighbors who are customers. They put him in the cramped back seat of a squad car where they left him for what seemed like twenty minutes.

On arrival at the Cicero Town Hall, Justice was taken into the backdoor of the lockup room, where he was questioned by a lieutenant. When he stopped answering questions, the lieutenant told Officers Kane and Vargas to go back over there and "tear that place apart." This was about ten o'clock. They returned to the building where they kept Plaintiff Woodward where he could not see what they were ransacking. When he moved toward them they put their hands on their pistols and warned him to stay where they had put him. No one knows what they took or how far their general search went, except for the weapons they inventoried. They had handcuffed Plaintiff Woodward and threatened to take him in for fingerprinting until he produced an Illinois photo identification card. Their acts were wanton and malicious and beyond the scope of the administrative search warrant which they were allegedly there to secure.

Justice was kept in solitary in a seven-foot square cell with a double bunk bed, a dirty combination sink and toilet with no paper, with in his sock feet on a dirty floor, after having been fingerprinted. His fingerprints were submitted to outside services to search for some crime he may have committed. At five-thirty or six-thirty he was given his coat and hat, shoes and property, with the

expectation that he would be leaving, and then was told to put the coat, hat, and property back in the locker. He had discarded his socks in the garbage. Defendant Officer Kane said at this time, "Johnny, Johnny! You never cease to amaze me." Justice demanded twice to talk with his lawyer between his re-confinement and his release. At 9:40 he was given his possessions, the receipt for the arms that had been seized, and six tickets each for knowingly failing to register the arms with fines set at a minimum of 100.00 if a plea of guilty was entered and paid without contest and a maximum of 500.00 if trial was demanded. This was the standard practice in the court in which Justice appeared on or about February 16, and brought instant pleas of guilty and pressing of the minimum fine into the hands of the clerk by the hapless multitude who were charged with having such crimes as having garbage outside their garbage containers that they protested had not been put there by them. This structuring of fines by Defendant Town of Cicero is in wanton disregard of defendants rights to a fair trial and amounts to extortion from defendants.

The incarceration of Justice for almost twelve hours was in wanton, malicious disregard of his rights as a heretofore respected American, who the Town of Cicero and its minions know, or should have known, has a spotless, if litigious, record.

Justice had a reservation with Southwest Airlines for departure from Midway Airport at 7:40 p.m. to visit with a terminally ill childhood friend. He had hoped that he would be released in time to run to the plane. He did not mention the scheduled flight for fear that he would be transferred to Cook County jail and kept the whole weekend. The acts of the Town of

Cicero in keeping Justice against his will and over his objection, and in violation of their promises, was a reckless, wanton, and malicious disregard of his rights and of common decency.

Justice was told early in the afternoon of the 24th of February by Officer Vargas that he would have to pay the licensing fee, pay the fines and register his arms and pay the fees for registering them, and that would be the end of it. On Monday morning, February 27, 2006, Justice went to the Business License Department of the Town of Cicero to obtain a license. The clerks, who were not known to him, recognized him and told him that he would have to apply for a license and pay the tickets. Justice told them that the tickets were dismissed and that he had not been issued any tickets. They insisted that the tickets had not been dismissed; that there were three of them. They stated that it would be two to three weeks before the application would be processed by the Legal Department, and that Justice could not "operate" until then, IF they let him open again at all. Their reckless, wanton, and malicious acts are intended to destroy Plaintiff Justice's business.

Plaintiff Justice began his business in 1964 when he formed a company in Illinois as Microcosm, Incorporated. In 1980 he concluded that the protections afforded him as an individual were superior to the limited liability of incorporation and does business under the assumed business name Microcosm. He had moved to Cicero in 1976 where he has quietly engaged in life, liberty, and the pursuit of happiness both as a corporation president and as a sovereign citizen. Defendant Town of Cicero has been aware of his existence: its water meter reader enters

the building every month; the Town fire marshal many years ago ordered electrical modifications such as explosion-proof lights and fire doors to seal the area where drums of adhesive are received and stored; the insurance company ordered that an alarm monitoring service be installed and the fire department was called and appeared when a sprinkler system pipe fitting broke as a result of freezing and the system alarmed when the thawed pipe allowed the pump to turn on; the fire department has toured the building after the roof caught fire from overheating from the catalytic converter and has had various changes and a sprinkler system test made which were done at the same time the alarm monitoring was installed; OSHA made its tour and assessed fines which, when contested, threatened Justice's attorney with sanctions for contesting them and said they were only proposed fines and if not paid at that level would be assessed at the full level of almost 100,000; the EPA is regularly present and has been in his building as the Illinois EPA and as the Cook County Environmental Control Department. Justice has contributed annually to the State Police program for booklets to teach children of Cicero some avowedly valuable lesson, and purchased a banner for the street light decorations last fall. The reaction by the Town of Cicero to Justice's assertions of his right to work without paying for it is reckless, wanton, and malicious, and their claim to a fee is estopped by laches because he has not paid them a fee to do business or work since he ceased doing business as a corporation.

In summary, it is commonly known that Plaintiff Justice is engaging in working for customers who need the products and services he provides on

mutually agreeable terms and has been doing so for forty-two years lacking a few months. The acts of the Town of Cicero and its employees are reckless, wanton, and malicious and directed toward Justice. They are intended to destroy the life work of Plaintiff Justice and as a consequence ruin the lives of those who work for him, and seriously damage the businesses of his customers who have relied upon him for years as their sole source of supply for many of the products that he makes or that he processes for them. Justice's suppliers have orders in process for the continuing flow of business that cannot be paid for as a result of the reckless, wanton, and malicious acts of the Town of Cicero. His business has been irrevocably damaged; his reputation has been damaged by his arrest and public dragging away from his property; his customers have been damaged by delay in orders that were due to be shipped on the day the Town and its employees invaded Justice's private property, and his customer relations have been damaged by the not-unlikely protracted wantonly malicious acts of the Town of Cicero.

WHEREFORE, Plaintiff Justice prays that this Honorable Court award him damages against the Town of Cicero in the amount of ten million dollars for their reckless, wanton, malicious acts, plus the actual damages determined at the conclusion of the suit, attorneys fees when an attorney can be found, and costs of this suit. Plaintiff Woodward prays that this Honorable Court award him damages against the Town of Cicero in the amount of one hundred thousand dollars for their reckless, wanton, malicious acts in awakening him, attempting to elicit a response from him that would allow them to kill him, ridiculing him,

restraining him of his liberties, and reckless endangerment of his life.

_/S/_____
John C. Justice, in propria persona

_/S/_____
Mike Woodward, in propria persona
1699 South 55th Avenue
Cicero, Illinois 60804
708-656-3250, FAX-6049

Document 49 in the Trial Court:
Third Amended Complaint

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

JOHN JUSTICE, et al.
Plaintiffs,
v.
Town of CICERO, et al.,
Defendants.
Case No. 06 C 1108
Judge Andersen
Mag. Judge Soat-Brown
NOTICE OF FILING

To:Holly Tomchey, Esq.
Giglio & Delgaldo
10526 W. Cermak, #300
Westchester, IL 60154
(312) 276-4325 (Fax)

PLEASE TAKE NOTICE, that on January 18, 2007, Plaintiffs herein, **JOHN JUSTICE** and **MIKE WOODWARD,** by and through their attorney, **THOMAS M. ARNETT,** filed the attached Third Amended Complaint.

_/S/_____
THOMAS M. ARNETT

PROOF OF SERVICE

THOMAS M. ARNETT certifies that on January 18, 2007 he delivered a copy of the attached pleading to the above attorney in open court.

___/S/_____

THOMAS M. ARNETT

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

JOHN JUSTICE, et al.
Plaintiffs,
v.
Town of CICERO, et al.,
Defendants.
Case No. 06 C 1108
Judge Andersen
Mag. Judge Soat-Brown

PLAINTIFFS' THIRD AMENDED COMPLAINT

NOW COME the Plaintiffs, **JOHN JUSTICE** and **MIKE WOODWARD,** by and through their attorney, **THOMAS M. ARNETT,** and as and for their Third Amended Complaint, state as follows:

BACKGROUND ALLEGATIONS

1.Plaintiff **JOHN JUSTICE** was sued in 1990 for failing to have a business license and for failing to allow Cook County Environmental Protection Agency inspectors, and Town of Cicero fire and building inspectors into his building.

2.Eventually John Justice went to jail briefly for contempt for continuing to not let the inspectors inspect.[1]

3.Soon thereafter, he managed to bring his building and business into compliance from the inspectors' points of view.

4.Plaintiff never did get the business license and the Town never pushed the matter further.

5.Plaintiff conducted business unimpeded for over ten years.

6.In fairness, there were occasional fire inspections to see if chemicals were stored separately from the plant's active floor processes.

7.In 2003, after a minor roof fire, the prior fire chief, after voicing certain concerns which Plaintiff corrected, found the plant in substantial compliance with the fire code and allowed it to continue to function.

8.Plaintiff thought there was an understanding to more or less leave him alone, within reason, considering the amount of effort they had all previously expended.

9.Now, once again, the Town is trying to regulate him.

10.Plaintiff believes that the Town is merely trying to raise revenue and is not trying to regulate, in violation of the Illinois Constitution.

11.The original Town employee that approached him from the licensing bureau told him to just go apply for

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[1] Aside from being a split infinitive, this is a false and damaging allegation on the part of plaintiff's attorney. Plaintiff Justice never went to jail for contempt for failing to allow inspections.

a business license, and did not seem to care what kind of work was being performed in the plant.

12.It was only when John Justice said that he could not see why he should have to do such a thing that the inspector started to talk about what were these smells, and that it seemed like there might be hazardous chemicals stored or processes being performed at the plant, and that if he refused to get a license he could be closed down on that basis.

13.To the extent that there is any regulation going on it is to punish people that irritate the Town or its employees, usually political oppenents, or to brutally make the point that you better pay up when we ask the first time, or you will really pay a price.

14.Plaintiff submits that this is not a bona fide attempt to regulate.

15.Once the Town decided to try to close down Plaintiff's business for failing to get a license, it used an affidavit of this licensing inspector, which was based on merest conjecture of someone with no experience with hazardous chemicals, and who was not allowed into the plant, where the Town had at its disposal the prior fire chief's inspections, accompanied by another Town building inspector, who had not long before that found the building and its contents substantially in compliance with the relevant codes.

16.It was an attempt to trump-up charges to close the building and the business down merely because he did not pay the licensing fee promptly when it was demanded he do so.

17.The Town of Cicero obtained this administrative search warrant essentially through false pretenses and false testimony, using highly inaccurate information,

when it had much more accurate information that found the building and business in substantial compliance at its disposal, and within its collective knowledge.

18.When the Town of Cicro then went to execute the warrant it used Gestapo-like tactics, dispersing throughout the plant as if it were a military operation, without allowing the owner to accompay them in an organized inspection, and waking the watchman, Plaintiff, **MIKE WOODWARD,** from his sleep with multiple laser sights blinding him.

19.Only after the inspection was complete did a further re-inspection of the office environs turn up all, or almost all of the firearms taken from the building.

20.The business licensing ordinance submitted to the Court that describes all the business activities for which you can be forced to get a license is overly broad on its face, and could include storage of gasolice in your garage for your lawn mower and snow blower, with no business activity taking place at all.

21.Despite its impeccable behavior before this Court in this case, the Town is not known for its just even-handed application of its over-broad regulatory ordinaces.

22.The Town, and its employees are also not known for their fair and above-board expenditures of the Town (and its residents) tax dollars.

23.The U.S. Attorney for this District has more than once alleged in proceedings before this Court, in other cases, that the Town of Cicero and its residents are victims of racketeering in violation of R.I.C.O. perpetrated by the Town's employees and elected officials and certain other insiders. Key officials have pled guilty, or been found guilty, of those allegations.

24.Even if the ordinance were not over-broad, and unconstitutional on its face, when wielded by this group of employees and official it is unconstitutional as applied.

25.Given this unique context, whether the licensing ordiance scheme is unconstitutional on its face or as applied, the Town should have to show that these funds are legitimately spent, or at least that they are not, or recently were not the subject of a federal investigation, before this Court should allow the Town to close down Plaintiff's business for failing to pay the requested fees in a timely manner.

BACKGROUND ALLEGATIONS RELATIVE TO WATER DEPARTMENT COLLECTIONS

26.Plaintiff, **JOHN JUSTICE,** installed a sprinkler system, which, once filled with water, uses virtually no water over the years.

27.Plaintiff was required to have this on a separate line with a separate meter.

28.With businesses, each meter is charged a minimum 2,500 gallon monthly usage, even if it's not used, including these dedicated lines for sprinkler systems.

29.On one occasion Plaintiff had a leak in his pipes which caused his bill to be quite a bit more than the usual monthly minimum, which constitutes his normal bill, and all those months and years of not coming remotely close to the monthly minimum usuage stood him absolutely no good. The excessive actual use for that month had to be paid, or the water would be turned off.

30.Plaintiff requested that the other meter, for the sprinkler system, be taken out, or at least that he not be charged the monthly minimum usage fee, and the

Town turned a deaf ear and refused to do anything to ameliorate the situation for Plaintff.

31.If you fail to pay your water bill promptly the Town charges a late fee which is usually about one-third extra, and constitutes a usurious interst rate. If you do not pay the bill and late fee within the next period your water is promptly turned off.

32As a consequence of the monthly minimum usage fee, Plaintiff has been disenclined to fix a fairly substantial leak in his bathroom which puts his usage up several times over his actual other usage, but does not cause the usage to go over the monthly minimum.

33.Plaintff has every reason to believe that revenues to the Town from its sale of water to residents and businesses is no less improperly spent than its revenues from business licenses, or its share of real estate taxes, which he pays under protest.

COUNT - I – FACIALLY UNCONSTITUIONAL BUSINESS LICENSING ORDINANCE

WHEREFORE, Plaintiff, **JOHN JUSTICE,** prays that this Court declare that the Town of Cicero's business licensing scheme is unconstitutional on its face.

COUNT - II – BUSINESS LICENSING ORDINANCE UNCONSTITUTIONAL AS APPLIED

WHEREFORE, Plaintiff, **JOHN JUSTICE,** prays that this Court find that the Town of Cicero's application of its business licensing ordinance as applied to him, his building, and his business is unconstitutional and violative of his constitutional rights as protected by the constitutions of the United States and the State of Illinois.

COUNT - III -- DAMAGES FOR UNCONSTITUIONAL LICENSING ORDINANCE

WHEREFORE, Plaintiffs, **JOHN JUSTICE** and **MIKE WOODWARD,** pray that this Court grant compensatory damages to Plaintiffs in excess of $50,000, and against the Defendant Town of Cicero's, and certain of its Defendant employees, for their violation of Plaintiffs' civil rights as set forth in 42 U.S.C. Section 1983, plus fees and costs.

COUNT - IV – CIVIL R.I.C.O. -- INJUNCTIVE RELIEF

Plaintiff incorporates paragraphs of the background allegations into this Count IV.

Plaintiff incorporates all allegations of R.I.C.O. activity by Town of Cicero officials and employees made by the U.S. attorney for this District into this Court IV, except for three which he reserves as required examples of "predicate acts" of racketeering activity, as required under R.I.C.O..

Defendants employees, named and unnamed, of the business licensing bureau and the Water Department

ran both offices as integral parts of an overall racketeering enterprises in that they knew, or had reason to know, that the revenues generated were being used to line the pockets of Town of Cicero officials and related insiders.

Plaintiff requests discovery to see if within each of these cash-generating department funds were misused by employees, prior to being forwarded onward for further misuse.

Plaintiff pays real estate taxes of over $30,000 per year, most of which is remitted back to the Town of Cicero, as well as his water bill, and his continued business existence is being threatened if he continues to refuse to annually pay for a business license.

Given the much publicized massive corruption that exists in the Town, Plaintiff respectfully asks that this Court appoint a receiver or special master to inquire into expenditures of revenues these two departments generate, as well as expenditures generally, given Plaintiff's payments of real estate taxes for decades, so that prior to the dismemberment or capitulation of Plaintiff, he can be reasonably assured that the funds he is required to pay to continue to exist are properly spent on legitimate expenditures.

Frankly, Plaintiff cannot park within two blocks of the Town hall when he is forced to engage in business with the Town, and now the Town's "legitimate" answer to how it spends its money, or plans to spend its money, is to build a grand new hall more than twice as big, as if that would somehow erase the stain of the activites of most of the Town's officials in recent years. Plaintiff is almost as much against these "legitimate" expenditures as the grossest misuses of funds that the U.S. Attorney has made public in recent years.

Irreparable harm will befall Plaintiff, stubborn as he has proven to be over the years, if the Town continues to try to force him to pay a regular licensing fee without any assurance that the Town, given its recent past, will spend the monies legitimately.

WHEREFORE, Plaintiff, **JOHN JUSTICE,** prays that this Court appoint a receiver or special master to review expenditures of this accused R.I.C.O. enterprise, particularly revenues generated from its business licensing and water departments, and such other further equitable relief as this Court deems just and appropriate.

COUNT - V – CIVIL R.I.C.O. – TREBAL DAMAGES

Plaintiff incorporates the allegations contained in the prior R.I.C.O. Count seeking Injunctive Relief.

If significant portions of the money Plaintiff paid in real estate taxes and water bills was misspent on illegitimate expenditures then Plaintiff requests disgorgement of these monies from the perpetrators, after investigation reveals their identities.

Plaintiff believes that he is but a member of a large and subjugated class of residents and businesses in the Town.

WHEREFORE, Plaintff, **JOHN JUSTICE,** prays that this Court grant him damages in excess of one million dollars.

COUNT - VI – STATE LAW BREACH OF TRUST (OFFICIAL MISCONDUCT)

WHEREFORE, Plaintiff, **JOHN JUSTICE,** prays that this Court grant him compensatory damages, including disgorgement, plus interest, fees and costs of in excess of one million dollars, and punitive damages of in excess of three million dollars.

COUNT - VII – STATE LAW COMMON-LAW FRAUD (OFFICIAL MISCONDUCT, SUBORNING PERJURY)

COUNT - VIII – FAIR DEBT COLLECTION ACT CLAIM AS TO WATER BILLS

COUNT - IX – STATE LAW REGULATION OF UTILITIES

COUNT - X – FEDERAL REGULATION OF UTILITIES

The water Plaintiff buys comes from Lake Michigan, an international waterway, the use of which affects interstate, and inter-country commerce.

COUNT - XI – VIOLATION OF THE ROBINSON-PATMAN ANTITRUST ACT

COUNT - XII – VIOLATION OF THE MAGNESON-MOSS ACT

COUNT - XIII – VIOLATION OF THE SHERMAN ANTITRUST ACT

COUNT - XIV – VIOLATION OF STATE ANTITRUST LAW

COUNT - XV – VIOLATION OF STATE CONSITUTIONAL SPENDING PROVISIONS FOR HOME-RULE UNITS (?)

COUNT - XVI – INJUNCTIVE RELIEF AS TO WATER BILLS

Plaintiff asks for the appointment of a receiver to review the billing practices and late fees imposed by the Town of Cicero Water Department.

___/S/_____

THOMAS M. ARNETT
THOMAS M. ARNETT
2885 N. Milwaukee
Chicago, IL 60618
(773) 235-0711

Document 68 in the Trial Court:
Supplemental Pleading Regarding Registration
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
John Justice
And Mike Woodward, Plaintiffs,
vs.
Town of CICERO, et al.,
Defendants
Case No. 06 C 1108
Honorable Wayne R. Andersen

Magistrate Judge Geraldine Soat Brown

SUPPLEMENT TO RESPONSE TO DEFENDANTS' MOTION TO STRIKE AND DISMISS

NOW COMES Plaintiff Justice and herewith submits a documentary supporting his position that the Town's ordinance requiring arms to be registered with the Town and setting a fee of seventy dollars to be paid annually for each item registered is an infringement of the right to keep and carry arms secured under the Second Amendment to the Constitution for the United States of America.

The document, ***Innocents Betrayed,***[11] written by Claire Wolfe and produced and directed by Aaron Zelman and Ignatius Piazza, graphically shows how registration of arms has led to extermination of 170 million innocent lives worldwide in the twentieth century. Some of this horror was only by deprivation of the ability to defend oneself, as in Rwanda in 1994. One of the most interesting for those fascinated by Machiavellian machinations was the Turkish genocide of the Armenians in the second decade of the 1900's. The plan was thoroughly thought out beforehand. The young Armenian men were drafted into the army so they would be unavailable to defend their people. Under gun control legislation, arms were forbidden to the Armenians and those who had arms were arrested. Then all were slaughtered—men, women, and children. This does not differ greatly from the genocides under the communists in Russia, China, and so on.

The media are complicitous in the propaganda designed to disarm American citizenry in their frequent derogatory referrals to "militia" as armed groups in civil wars.

Disarming and killing of the unarmed continues in Iraq, Afghanistan, and the District of Columbia. It is a cause for rejoicing among those who treasure liberty that the United States Court of Appeals for the

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[11] Available from Jews for the Preservation of Firearms Ownership, P.O.Box 270143, Hartford, Wisconsin 53027, 262-673-9745.

District of Columbia Circuit has ruled in Parker v. District of Columbia, 478 F.3d 370 (D.C. Cir., 2007),

> "Appellants contest the district court's dismissal of their complaint alleging that the District of Columbia's gun control laws violate their Second Amendment rights. The court held that the Second Amendment ("A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed") does not bestow any rights on individuals except, perhaps, when an individual serves in an organized militia such as today's National Guard. We reverse."

In fact, the Amendment does not "bestow" any right; it limits the power of government, precluding government at any level, including the Home Rule government of the Town of Cicero, from passing any rule, regulation, ordinance, statute, law that infringes upon that liberty.

The ruling in ***Parker*** will likely be before the United States Supreme Court. There are other rulings asserting the individual right to keep and bear arms, e.g., ***US v. Emerson***, 270 F.3d 203 (5th Cir. 2001). These are basic issues that must be resolved. Dr. Edwin Viera (Ph.D. as well as JD) in his most recent seminal book, ***Constitutional Homeland Security: The Nation in Arms***, (2007) tells us that the Constitution is OURS, not the governments'. We, the citizenry are the ones who must preserve it and we

are fully capable of interpreting it, and remembering the words of the Declaration of Independence, as well.

This plaintiff prays that the message in the accompanying documentary will inform both Court and the Counsel for all parties; that all will consider the path that government has taken and the disastrous consequences of misguided good intentions in supporting in any way the disarming of the citizenry.

Respectfully submitted,

_/S/_____

John C. Justice
1699 South 55th Ave.
Cicero, Illinois 60804
708-656-3250, FAX 656-6049

Document 69 in the Trial Court:
Record of Filing Digital Video Disk

Case 1:06-cv-01108 Document 69 Filed 07/16/07
Page 1 of 1

DOCUMENT NOT IMAGED DUE TO ONE OR MORE REASONS LISTED BELOW:

☐ TOO VOLUMINOUS
☐ QUALITY NOT LEGIBLE
☐ FONT TOO SMALL
☐ PHOTOGRAPHS
☒ OTHER: _____ Digital Video Disk__

TO VIEW THE DOCUMENT YOU MUST OBTAIN THE CASE FILE AT THE CLERK'S OFFICE. THE CLERK'S OFFICE IS OPEN FROM 8:30 AM. to 4:30 P.M.
MONDAY THROUGH FRIDAY EXCEPT FOR LEGAL HOLIDAYS. TO OBTAIN A COPY YOU CAN CALL THE CLERK'S OFFICE SERVICE CENTER AT 312-435-5699.

Document 81 in the Trial Court:
Memorandum Opinion and Order

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN C. JUSTICE and
MIKE WOODWARD,
Plaintiffs,
v. TOWN OF CICERO,
DENNIS DOE, JERRY JAROSZ,
and One to Two Dozen Unknown
Other Employees of the Town of Cicero,
in their individual and official capacities,
Defendants.

No. 06 C 1108
Wayne R. Andersen
District Judge

MEMORANDUM OPINION AND ORDER

Plaintiffs John Justice and Mike Woodward filed this lawsuit against the Town of Cicero, Dennis Doe, Jerry Jarosz, and one or two dozen other unidentified Town employees, alleging civil rights violations pursuant to 42 U.S.C. § 1983 ("Section 1983"). Plaintiffs also assert an antitrust claim against the Town and seek a declaratory judgment and injunctive relief.

Defendants filed a motion to dismiss all counts of the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).
For the following reasons, we grant the motion.

BACKGROUND

On February 24, 2006, Town of Cicero police officers served an administrative search warrant at a business owned by Plaintiff John Justice. The warrant had been issued that day by a Cook County Circuit Court judge who found that there was probable cause to believe that Justice may be violating as many as nine Town ordinances. The warrant was granted primarily based on information contained in an affidavit submitted by Larry Hippert, a Town business license and building inspector. Hippert claimed, among other things, that Justice had failed to apply for a business license, that he believed Justice was using a chemical solvent inside the building, that
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Justice had violated an administrative judge's February 16, 2006, order to let Town inspectors onto the premises, and that the health and safety of the community was at risk if Justice was improperly storing, using, and/or disposing of chemical solvents. Plaintiff Justice admits that, at the time the warrant was issued, he was operating a business in the Town without a license, asserting that he had a constitutional right to do so. During the execution of the search warrant,

police officers found and seized six unregistered handguns belonging to Plaintiff Justice. They arrested Justice and issued him six tickets for violating the Town's firearms registration ordinance.

On February 8, 2007, Plaintiffs filed a third amended complaint against the Town, Dennis Doe, Jerry Jarosz, and one or two dozen other unidentified Town employees. Count I alleges civil rights violations pursuant to 42 U.S.C. § 1983 in violation of Plaintiffs' Second, Fourth, and Fourteenth Amendment rights. Count II seeks a declaration that the Town's business licensing ordinance is unconstitutional. Count III asserts an antitrust claim against the Town for the operation of its water department. And Count IV requests that the court appoint a receiver to review the billing practices, imposition of late fees, and expenditures of the Town's water and business licensing departments. Defendants filed a motion to dismiss all counts under
Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief could be granted.

LEGAL STANDARD

In ruling on a motion to dismiss, the court must draw all reasonable inferences that favor the plaintiff, construe the allegations of the complaint in the light most favorable to the plaintiff, and accept as true all well-pleaded facts and allegations in the complaint. Thompson v. Ill. Dep't
of Profl Reg., 300 F.3d 750, 753 (7th Cir. 2002); Perkins v. Silverstein, 939 F.2d 463, 466 (7th Cir.

1991). Under Fed. R. Civ. P. 8(a)(2), a complaint need only contain "a short and plain

statement of the claim showing that the pleader is entitled to relief." The Supreme Court recently interpreted that language to impose two minimal hurdles. "First, the complaint must describe the claim in sufficient detail to give the defendant 'fair notice of what the . . . claim is and the grounds upon which it rests.'" EEOC v. Concentra Health Servs., 2007 U.S. App. LEXIS 18487, at *6 (7th Cir. Aug. 3, 2007) (citing Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1964 (2007); Conley v. Gibson, 355 U.S. 41, 47 (1957)). Second, the complaint's allegations "must plausibly suggest that the defendant has a right to relief, raising that possibility above a 'speculative level'; if they do not, the plaintiff pleads itself out of court." Concentra Health, 2007 U.S. App. LEXIS 18487, at *6 (citing Bell Atlantic, 127 S. Ct. at 1965, 1973 n.14).

DISCUSSION

I. Plaintiff Mike Woodward's Claim

In Count I, Plaintiff Mike Woodward, a 24-hour security guard at Plaintiff Justice's business, alleges that the Town's police officers violated his civil rights the day the officers served the administrative search warrant. Woodward alleges that he was awakened from a nap by the commands of the police officers who had the laser sights on their weapons pointed at his eyes. To state a claim under Section 1983, two elements are necessary: (1) the plaintiff must prove

that the defendant deprived him of a right secured by the "Constitution and laws" of the United States; and (2) the plaintiff must show that the defendant deprived him of this constitutional right "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory." Adickes v. S. H. Kress & Co., 398 U.S. 144, 150 (1970). In the third amended complaint, Plaintiff Woodward is mentioned only briefly and only in Count I. Woodward claims he is entitled to relief under Section 1983 because he "suffered the start of his

life" when he woke up and found the police officers with their guns pointed in his direction. The complaint alleges that "[t]he officers intended to fire the weapons if he moved mere inches."
The rest of the complaint deals exclusively with issues raised by Justice.

We presume Woodward is alleging excessive force by the police officers, but the complaint does not allege any facts to support such a claim. Thus, we dismiss Woodward's claim under Count I. The rest of this opinion will focus on Justice's claims.

II. Section 1983 Municipal Liability
Count I of Justice's complaint alleges a Section 1983 violation against all of the defendants, jointly and severally, including the Town. Specifically, the complaint alleges that Defendants "violated federally protected constitutional rights against unreasonable and illegal searches and seizures, under the 2nd, 4th,

and 14th Amendments of the Constitution, protected by the Bill of Rights and 42 U.S.C. Section 1983." The doctrine of respondeat superior cannot be used to hold local governmental entities liable for Section 1983 violations. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691 (1978). In Monell, the Supreme Court stated:

[A] local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983. 436 U.S. at 694. Therefore, a local government "is only responsible for its employees'
actions if taken pursuant to an unconstitutional policy or custom of the municipality itself," Garrison v. Burke, 165 F.3d 565, 571 (7th Cir. 1999), or when a "valid policy is
unconstitutionally applied by a municipal employee" who has not been adequately trained and the "constitutional wrong has been caused by that failure to train." City of
Canton v. Harris, 489 U.S. 378, 387 (1989). A policy or custom can take one of three
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forms: (1) an express policy that, when enforced, causes a constitutional deprivation; (2) a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a "custom or usage" with the

force of law; or (3) an allegation that the constitutional injury was caused by a person with "final policymaking authority." Garrison, 165 F.3d at 571-72.

In this case, Plaintiff's complaint states that the Town's business license and firearms registration ordinances are unconstitutional on their face or as applied to him. Defendants argue that the Town's ordinances are not unconstitutional, and, therefore, Plaintiff cannot state a valid
Section 1983 claim. We agree with Defendants.

A. The Town's Business License Ordinances
The Town of Cicero has home-rule powers. Article VII, § 6(a) of the Illinois Constitution provides:

Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.
Ill. CONST. art. VII, § 6(a). Home rule units have the same powers as the sovereign, except when such powers are limited by the General Assembly. City of Urbana v.
Houser, 367 N.E.2d 692, 694 (Ill. 1977). Powers and functions of home rule units are to be construed liberally. Ill. CONST. art. VII, § 6. In 65 ILCS 5/11-60-1, the Illinois
legislature explicitly granted municipalities the power to issue and revoke licenses.
When a home rule unit has the power to regulate, it also has the power to license. Cicero v. Weilander, 183

N.E.2d 40, 45 (Ill. App. Ct. 1962). Government officials grant licenses to a) confer a right or power which does not exist without it, b) regulate and control an occupation or privilege for which the license is granted so as to serve the

public good, c) prevent an occupation or privilege from being conducted in a manner injurious to the public welfare, or d) raise revenue. Id. at 43.

In this case, Plaintiff contends that the business license ordinance is unconstitutional because it is overly broad and because the license is not reasonably tied to any regulatory purpose and is merely a revenue gathering maneuver. The complaint also indicates that Plaintiff had refused to get a business license because he was "an American citizen doing business as a matter of liberty under the Declaration of Independence and the Constitution for the United States of America." Plaintiff's arguments are not persuasive.

First, the wording in the section of the business license provision in question is not overly broad. The provision would not, as Plaintiff contends, force a person who was storing gas in his garage for a lawnmower to obtain a business license "with no business activity taking place at all." On the contrary, Town Code Sec. 26-31 provides in pertinent part that "[n]o person shall engage in or manage or operate any business, profession or occupation within the town unless a town

license shall have been procured from the license officer." And Sec. 26-236 provides:

"Without first having obtained a license for the operation of such business from the town, no person shall conduct or operate any of the following: (1) Factory; (2) Plant; . . . (4) Manufacturing establishment; . . . (22) Manufacturer of or treatment or distribution or storage of any products of any nature whatsoever." It is this last part that Plaintiff says could force a homeowner with a gas can to be required to obtain a business license. But that one provision cannot be read in isolation. When it is read in the context of the entire section, it is clear that the section pertains to people operating businesses, not individual homeowners with lawnmowers.

Second, Plaintiff's conclusory statement that the Town's business licensing process is merely a "revenue gathering maneuver" is not supported by the facts. The Town's purpose in

regulating businesses and issuing licenses is to protect the general health and welfare of the citizens of the Town. These purposes were exactly what was envisioned by the Illinois legislature when it granted home rule units the power to regulate things such as zoning, health matters, building codes, electrical systems, and nuisances. See 65 ILCS 5/11-13-1, 5/11-16-1, 5/11-30, 5/11-31, 5/11-33, and 5/11-60-2.

Because the Town's business license ordinance is not unconstitutional and because the actions of the Town employees in this case were undertaken in an effort to determine whether Plaintiff had a business license and what activity was taking place inside the business, Plaintiff, according to Monell, cannot maintain a Section 1983 claim against the Town. See Garrison, 165 F.3d at 571. Therefore, that part of Plaintiff's claim in Count I is dismissed and the declaratory judgment sought in Count II that the Town's business license ordinance is unconstitutional is dismissed as well.

B. The Town's Firearms Registration Ordinance

Cicero's Town Code Sec. 62-260 requires that all firearms in Cicero be registered with the Town. The Second Amendment provides that "[a] well regulated Militia being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

U.S. CONST. amend. II. But the Second Amendment regulates only the activities of the federal government — not those of the states or their subdivisions. Quilici v. Village of Morton Grove, 695 F.2d 261, 269-71 (7th Cir. 1982), cert. denied, 464 U.S. 863 (1983).
Article I, § 22 of the Illinois Constitution provides: "Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed." Ill. CONST. art. I, § 22. But an examination of § 22 reveals that an individual's right to bear arms in Illinois is narrow and subject to extensive regulation. Sklar v. Byrne, 727 F.2d 633, 637 (7th Cir. 1984).
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For example, an individual's right to bear arms is expressly subject to the police power.
"Section 22 thus gives the state and municipalities wide latitude to regulate the private possession of firearms in order to protect the public health, safety and welfare." Id. at 637 (citing Quilici, 695 F.2d at 267; Kalodimos v. Village of Morton Grove, 447 N.E.2d 849, 852 (Ill. 1983). Moreover, the Illinois Supreme Court has held that local ordinances requiring firearm registration do not violate the Second Amendment because "regulation which does not impair
the maintenance of the State's active, organized militia is not in violation of either the terms or the purposes of the second amendment." Brown v. Chicago, 250 N.E.2d 129, 131 (Ill. 1969).

Additionally, the Illinois Constitution authorizes local governments to function as home rule units to

"exercise any power and perform any function pertaining to its government and affairs." Ill. CONST. art. VIII, § 6(a). "Home rule government is based on the theory that local governments are in the best position to assess the needs and desires of the community and, thus, can most wisely enact legislation addressing local concerns." Quilici, 695 F.2d at 267-68
(internal citation omitted).

In this case, while serving an administrative search warrant on Plaintiff's business, Cicero police officers found six unregistered firearms belonging to Plaintiff. Plaintiff was arrested and cited for six counts of failing to register firearms, in violation of Town Code § 62 260. Plaintiff asserts in his complaint that it is a "violation of [his] Second Amendment right to keep and bear arms for the Town of Cicero to regulate and criminalize the mere possession of firearms by a taxpaying property owner" who does business in the Town. He alleges that the Town's firearms ordinance is unconstitutional on its face or as applied to him. Because the Second Amendment only regulates the activities of the federal government, not municipalities, the Town's firearms ordinance does not violate any federal constitutional
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right. See Quilici, 695 F.2d at 269-71. And because the Illinois Constitution gives home rule units wide latitude to regulate the private possession of firearms in order to protect the public health, safety, and

welfare, the Town's firearms ordinance does not violate the State constitution.
See Sklar, 727 F.2d at 637. Thus, the Town's firearms ordinance is constitutional, and Plaintiff's claim to the contrary must fail. For these reasons, we grant Defendants' motion to dismiss Plaintiff's Second Amendment claim in Count I.

III. Section 1983 Individual Liability
Count I of Plaintiff's complaint alleges a Section 1983 violation against all of the defendants, jointly and severally, including many Town employees. Only two individual defendants, Dennis Doe and Jerry Jarosz, were named in the complaint. Only Jarosz, the Town's Business License Officer, was served. The complaint seeks to hold the individual defendants liable in both their official and individual capacities.

In Luck v. Rovenstine, the Seventh Circuit held that "[i]ndividual capacity claims 'seek to impose individual liability upon a government officer for actions taken under color of state law,'" and that to establish personal liability in a Section 1983 action, the plaintiff must show that the individual defendant "caused the deprivation of a federal right." 168 F.3d 323, 327 (7th Cir. 1999) (citing Hafer v. Melo, 502 U.S. 21, 25 (1991)). A state actor sued in an individual capacity may assert personal immunity defenses. Luck, 168 F.3d at 327 (citing Harlow v. Fitzgerald, 457 U.S. 800, 815 (1982)). In order to maintain a valid Section 1983 claim against local officials acting in their official, rather than their individual capacities, a plaintiff must allege that an official policy or custom deprived him of a constitutionally protected right. Leinberger v.

Campion, 1994 U.S. Dist. LEXIS 9474, at *18 (N.D. Ill. July 12, 1994) (citing Monell, 436 U.S. at 690-91).

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Additionally, police officers, under the doctrine of qualified immunity, are "shielded from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." Anderson v. Creighton, 483 U.S. 635, 638 (1987). Qualified immunity protects an officer who reasonably, but mistakenly, believed that probable cause existed. Burns v. Reed, 44 F.3d 524, 529 (7th Cir. 1995).

Plaintiff, in his third amended complaint, does not state why the two named Defendants, Dennis Doe and Jerry Jarosz, should be individually liable. Plaintiff implies that the unidentified Town police officers who executed the search warrant should be individually liable because: (1) they had constructive knowledge that he and his business were in substantial compliance with the Town's building and fire codes; (2) they "worked closely enough" with the building inspector who helped secure the search warrant that they should have known the inspector's affidavit contained alleged falsehoods, conjecture, and inaccuracies; (3) they lacked probable cause to believe the plaintiff and his business were violating the Town's building, fire, and zoning ordinances; and (4) their acts were intentional, willful and wanton.

First, this court will take judicial notice of the fact that a Cook County Circuit Court judge on February 24, 2006, found that there was probable cause to believe that Justice might have beeen violating as many as nine Town ordinances. Thus, the police officers are shielded by qualified immunity because they reasonably believed, based on the judge issuing a warrant, that probable cause existed. See Burns, 44 F.3d at 529. Second, Plaintiff's statement that the employees who executed the search warrant acted intentionally, willfully, and wantonly is a conclusion of law, not a statement of fact. And third, assuming any of the other allegations are true, they do not amount to the personal involvement necessary for a finding of individual liability in a Section 1983 case. See, e.g., Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995)
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(holding that for an official to be personally responsible under Section 1983, the constitutional deprivation complained of must have occurred at his direction or with his knowledge and consent).

Moreover, in this case there was no constitutional deprivation. The Town had authority to require that Plaintiff have a license to operate his business and register his handguns. And the Town was ordered to execute the search warrant issued by a state court judge. Therefore, there
is no Section 1983 liability against any of the individual defendants and all claims against them are dismissed.

IV. Antitrust Claim

In Count III, Plaintiff alleges that the Town's water department rates and billing amount to an antitrust violation. As stated above, Fed. R. Civ. P. 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47 (1957). A complaint attacked by a Fed. R. Civ. P. 12(b)(6) motion to dismiss does not need detailed factual allegations, but "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions . . . ." Bell

Atlantic Corp. v. Twombly, 127 S. Ct. 1955, at *1964-65 (2007) (internal citations omitted).

Making an allegation or a bare assertion will not suffice. Id. at 1966.

A district court must retain the power to "insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed." Associated Gen. Contractors of Cal., Inc. v. Carpenters, 459 U.S. 519, 528 n.17 (1983). The Seventh Circuit has held that "the costs of modern federal antitrust litigation and the increasing caseload of the federal courts counsel against sending the parties into discovery when there is no reasonable likelihood that the

plaintiffs can construct a claim from the events related in the complaint." Car Carriers, Inc. v. Ford Motor Co.,

745 F.2d 1101, 1106 (7th Cir. 1984). Thus, "when the allegations in a complaint, however true, could not raise a claim of entitlement to relief, 'this basic deficiency should . . . be exposed at the point of minimum expenditure of time and money by the parties and the court.'" Twombly, 127 S. Ct. 1955, at * 1967 (internal citations omitted).

Additionally, the Parker Doctrine exempts States, acting through their legislatures, from antitrust liability arising from anticompetitive conduct. Parker v. Brown, 317 U.S. 341, 350-51 (1943). As the Town noted in its motion to dismiss, the Parker Doctrine exemption extends to local governments, placing them "beyond the reach of the antitrust laws," if the local governments can demonstrate that their anticompetitive activities are authorized by the State "pursuant to state policy to displace competition with regulation or monopoly public service." Town of Hallie v. City of Eau Claire, 471 U.S. 34, 39 (1985).

In this case, the Illinois General Assembly has granted local governments, such as the Town of Cicero, the authority to build and operate their own waterworks and to fix and collect water rates or rents as the corporate authorities may deem necessary or expedient. 65 ILCS 5/11-125-3. Moreover, the legislature has codified, by statute, the Parker Doctrine's "State action exemption" for local governments that provide and regulate local services:

The General Assembly intends that the "State action exemption" to application of the federal antitrust laws be fully available to local governments to the extent

their activities are either (1) expressly or by necessary implication authorized by Illinois law or (2) within traditional areas of local government activity . . . .

The "State action exemption" for which provision is made by this Section shall be liberally construed in favor of local governments, the agents, employees, and officers thereof . . .

. . . It is the intention of the General Assembly that the "State action exemption" to the application of federal antitrust statutes be fully available to any such Sanitary

District, its officers, agent and employees to the extent they are exercising authority pursuant to law.
50 ILCS 35/1.

With these principles in mind, it is clear that Plaintiff, in his third amended complaint, fails to meet the minimal pleading standards laid out in Fed. R. Civ. P. 8(a)(2) to support an antitrust claim. See Twombly, 127 S. Ct. 1955, at *1966. First, Plaintiff fails to identify which provisions of the antitrust laws the Town has allegedly violated. He mentions that the Town has a monopoly over the water supply, but he does not allege anticompetitive action by the Town. His major complaints are that the Town charges minimum monthly fees on two water meters (the main water meter and a fire sprinkler meter) and that the Town charges a late fee of approximately 33 percent. Second, he asserts that "charging a usurious interest rate" violates "various state and federal laws" and "the

covenant of good-faith and fair-dealing inherent in these transactions," without citing any actual state or federal laws that the Town may have violated. Finally, he incorrectly alleges that it was violative of the Clayton Act to "illegally tie-in extra meters, minimum usage charges, usurious late charges, and sewer charges to the basic supply of water."
Plaintiff's bare assertions are belied by both 65 ILCS 5/11-125-3, which expressly grants local governments the power to "make all needful rules and regulations concerning the use of water supplied by the waterworks of the city or village" and to fix and collect such water rates "as the corporate authorities may deem necessary or expedient," and 50 ILCS 35/1, which exempts local governments from federal antitrust laws "to the extent their activities are either (1) expressly or by necessary implication authorized by Illinois law or (2) within traditional areas of local government activity." Therefore, because the facts stated in Case 1:06-cv-01108 Document 81 Filed 10/10/2007
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Plaintiff's complaint, even if true, do not give rise to a claim of entitlement to relief, this count is dismissed now, "at the point of minimum expenditure of time and money by the parties and the court.'" See Twombly, 127 S. Ct. 1955, at * 1967.

V. Punitive Damages
In Count I, Plaintiff seeks $3 million in punitive damages against Defendants, jointly and severally. Because we are dismissing all counts of Plaintiff's

complaint, his claim for punitive damages fails. Additionally, the Town properly asserts that punitive damages are not permitted against local public entities in Illinois. 745 ILCS 10/2-102. Section 2-102 of the Illinois Code specifically states: "Notwithstanding any other provision of law, a local public entity is not liable to pay punitive or exemplary damages in any action brought directly or indirectly against it by the injured party or a third party." 745 ILCS 10/2-102. Accordingly, Defendants' motion to dismiss Plaintiff's punitive damages request is granted.

VI. Claim for Injunctive Relief

In Count IV, Plaintiff seeks injunctive relief and requests that the court appoint a receiver to oversee the collections and expenditures of the Town's Water and Business Licensing departments. A receiver is an impartial person appointed by the court to "receive the rents, issues, or profits of land, or other thing in question in this court, pending the suit, where it does not seem reasonable to the court that either party should do it." Booth v. Clark, 58 U.S. 322, 331 (1855). Modernly, "[t]he general task of a receiver is to 'assume[] control over, take[] custody of, or manage[] property that is involved or likely to become involved in litigation. The receiver conserves the property by taking appropriate actions pending the final outcome of the suit.'"

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CFTC v. Eustace, 2005 U.S. Dist. LEXIS 40247, at *4 n.1 (E.D. Pa. Dec. 29, 2005) (internal citation omitted).

In this case, we are dismissing Counts I, II, and III of Plaintiff's third amended complaint for failure to state a claim. As a result, Plaintiff's request to appoint a receiver to oversee the Town's water and business licensing departments is moot. There is no litigation pending, thus there is no property "involved or likely to become involved in litigation" for a receiver to oversee. See CFTC, 2005 U.S. Dist. LEXIS 40247, at *4 n.1.

CONCLUSION

For the aforementioned reasons, Defendants' motion to dismiss [60-2] is granted. Defendants' motions to strike [57, 74] are denied as moot. This case is hereby terminated. This is a final and appealable order.

It is so ordered.

Wayne R. Andersen
District Judge

Dated: October 10, 2007

Document 84 in the Trial Court:
Motion to Reconsider

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

John C. Justice and
Mike Woodward,
Plaintiffs

vs.

THE TOWN OF CICERO,
et al.,
Defendants.

CASE NO: 06C-1108

JUDGE WAYNE ANDERSEN

MAGISTRATE JUDGE
GERALDINE SOAT BROWN

RULE 59(e) MOTION TO RECONSIDER

NOW COME the Plaintiffs and in support of their Rule 59(e) Motion to Reconsider, states as follows:

RECASTING OF FACTS

The small room above the main office space, where the police found Mike Woodward asleep, as well as a shotgun, was beyond the scope of the search warrant in that it was highly unlikely any work was being performed there with hazardous chemicals, or otherwise. The police told Woodward that they had

heard that that was where the guns were. They lured Justice to the police station by saying that he would have to go down there to receive a receipt for the confiscated shotgun. They took him out of the building in handcuffs in the sight of his customer-neighbor. Justice believes that the same person that was urging his arrest at the Maywood courthouse in 1991 was leading the search of his premises years later in 2007. The entire front of his building was blocked with almost a dozen squad cars advertising the demise of this notorious recalcitrant. A police officer told Justice he can have as many guns as he wants, he just has to pay the Town $70/year for each one. After Justice's arrest, he declined to answer the police lieutenant's inquiry as to more guns, and the lieutenant told the officers to tear

that place apart, which they did, after the inspection itself was completed. More guns were found in the office space closets, well away from any hazardous materials, which the Town of Cicero knew were stored at or near the loading dock. The real purpose of the search was to find guns and arrest Justice, not to inspect the business for hazardous chemicals, regarding which the Town was already well informed. Justice ought to be afforded the chance to prove this version of the facts, rather than the mere execution of an administrative search warrant to check for hazardous chemicals.

DOES THE ISSUANCE OF THE WARRANT CLEANSE THE TAINT OF THE LIES AND HALF-

TRUTHS CONTAINED IN THE UNDERLYING AFFIDAVIT

The crux of the case is whether the police officers are able to hide behind (or be shielded by) the probable cause finding of the judge, if they know that the affidavit in support of the search warrant (which was relied upon by the judge) was replete with falsehoods and half-truths. Can the Town avoid liability by going in front of a judge, who routinely approves these requests for administrative search warrants without a hearing, and then not have the affiant present during the execution of the resulting warrant. This case is being determined on the viability of the complaint, not after oral discovery that would set out the facts by the judge, other than presumably reading the affidavit. It has been hard for Plaintiff to find cases on just such allegations of falsehoods in the affidavit and the extent to which other municipal actors are shielded. Plaintiff would like time to submit a memo in support of this motion, or in reply, prior to a hearing, or decision, on this motion.

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THERE IS NO PIECE-MEAL ENFORCEMENT OF THE BILL OF RIGHTS

In upholding municipal handgun bans courts have said that the Second Amendment right to bear arms, out of all the other rights enumerated in the Bill of Rights, does not apply to State actors. It is said that bad cases (or hard factual patterns) lead to bad law. Can this Court explain how the results in those cases should circumscribe any inquiry into attacks on any municipal gun ordinance? Does this really mean that the Second Amendment does not exist as a protection

unless the actors are federal actors? Could government actors simply confer and agree that the state should move in, rather than the fed, simply because those actions would be beyond review. It makes no sense, and is dangerous wording that was not necessary to reach the result taken, and this Court in this case need not rely upon. The language was gratuitous. All the court in those cases really needed to say is that the Second Amendment right to bear arms was mainly to uphold the right of the people to field a militia, and that handguns were not a central component of that right.

"NECESSARY" HAS TO HAVE AN OBJECTIVE COMPONENT

The wording in the enabling statute as to water works is important to deciding the applicability and scope of the governmental action exemption to the anti-trust laws. Does necessary and expedient language mean that the government could take virtually any action even if objectively the action is not necessary? Is ther no review whatever? Are there no limits to the applicability of the exemption? There are in fact limits. In one California case, cited by the parties, where the court felt that the conservation of all water was the enabling statute's primary objective, the municipality allowing water to run

downstream to another state, and to the direct detriment of an adjacent municipality, was held to not be exempt. In an old Illinois case the City of Chicago water department charging a repossessing bank with the bills of the mortgagor, or else the

water was cut off, was held to be unreasonable and actionable, though the case was not an anti-trust case, City of Chicago v. Northwestern Mut. Life Ins. Co., 218 Ill. 40, 75 N.E. 803 (1905)

Thirty-three percent late charges, hundred dollar minimum charges on meters not being used, and a recent twenty percent across the board increase in rates are arguably not necessary. Is there not objective review of this kind of apparent price gouging in a monopoly situation by a municipality, or are they able to hide behind a claim that they deemed it necessary due to other short-falls in their budget, unrelated to the operation of this monopoly. Again, there has been no oral fact discovery in this case.

CONCLUSION

Plaintiffs are entitled to their day in court, or, at a minimum they should be permitted to reach the summary judgment stage.

WHEREFORE, the Plaintiffs pray that this Court reconsider and vacate the final order of October 10, 2007, and reset this matter for trial.

/S/_____

THOMAS M. ARNETT
2885 N. Milwaukee Ave.
Chicago, IL 60618
773-235-0711

Document 87 in the Trial Court:
Affidavit of Issues following Opinion
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

John C. Justice and
Mike Woodward,
Plaintiffs

vs.

THE TOWN OF CICERO,
et al.,
Defendants.

CASE NO: 06C-1108

JUDGE WAYNE ANDERSEN

MAGISTRATE JUDGE
GERALDINE SOAT BROWN

AFFIDAVIT

John Justice, pursuant to Matthew 5:34, responds to the Memorandum Opinion and Order of this Court to offer what he believes has been misapprehended in the Court's review of the facts before it, and offers these statements of what he believes to be the facts in this case:

Justice and Woodward's original complaint was filed as sovereign citizens filing in an Article III Court, not as 14th Amendment citizens pleading as subjects of the federal government and the State

government. We are each sovereign citizens as referred to by Justice Roger Taney in his opinion in Dred Scott v. Sandford, 60 U.S. 393, 19 How. 393, 15 L.Ed. 691 (1856),

> The words 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the
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> sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the 'sovereign people,' and every citizen is one of this people, and a constituent member of this sovereignty. Id., at page 400.

The sovereignty of the State of Illinois' "home rule" municipalities and their employees cannot supercede that of citizens.

Justice did not knowingly waive his status when ordered to get an attorney to assist in pleading his case as an alternative to having the complaint dismissed. He did not waive his status or capacity to plead on his own behalf as set forth in the Judiciary Act of 1789,

> "The Judiciary Act of 1789
> "September 24, 1789.
> "1 Stat. 73. SEC. 35. And be it further enacted, That in all courts of the United States, the parties may plead and manage their own causes personally or

> by assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein."

The local rules of the United States District Court for the Northern District of Illinois cannot diminish the rights and privileges of citizens set forth in the Judiciary Act of 1789, however convenient for the Court and the Officers of the

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Court its rules may be, and however inadequately pleaded the plaintiff's own filings may be.

This Court has stated that an administrative judge of the Town has ordered Plaintiff Justice to allow Town inspectors onto the premises; Plaintiff Justice has been cognizant of and compliant with the Town's, County's, and State's inspections. Justice's property has been a virtual playground through which inspectors have romped ***ad libitum*** and he has complied, albeit longsufferingly, with their burdensome orders. The Town has or should have known that it has repeatedly inspected Justice's property and has known or should have known that Justice has been using adhesives and solvents from the beginning of his ownership and occupancy of the building. Justice has had possession and ownership of the building since 1976 and has not injured any citizen of the Town. The industrial injuries incident to the work there have been so minimal that insurance rates have decreased annually.

The arms seized in Justice's building were not found in the execution of the search warrant and

were beyond the scope of the warrant. In Plaintiff Mike Woodward's affidavit of this date, he states that the police officers invaded his privacy because they had been told that that was where the guns were. In so far as the rights secured under the Second Amendment to the Constitution for the United States are concerned, it makes no difference what type of arms were seized, but all

of the arms seized were other than handguns except one, and a starting pistol that had been modified; all the others were rifles or shotguns, one of which was an antique shotgun which cannot be fired without destroying the barrels. There were some fourteen arms seized in their unwarranted search and tickets were issued for only a portion of them. Fines were paid under protest and other charges were waived by the Town attorney. When Plaintiff Justice was humiliated by being carried off handcuffed in a squad car to the Town lockup, the police officers told him, "Oh, you can have all the guns you want; you just have to pay to have them registered." This is a patent violation of the Second Amendment which is applicable to the States and their "home rule" municipalities under the Supremacy Clause of the Constitution, Article VI, Clause 2, which states,

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;

> and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Plaintiff Justice believes the Supremacy Clause includes the Ordinances of the Town of Cicero.

Plaintiff Justice believes that he has been maliciously and wantonly

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mistreated by the employees of the Town of Cicero by their acts that went far beyond the "inspection" that Larry Hippert alleged to be necessary in his affidavit for search warrant. His observational abilities and recollection of details including statements by Justice and the name of the business on the building were faulty.

The home-rule powers provided for under Article VII, § 6(a) of the Illinois Constitution of 1970 allow a home-rule unit to "regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt." Justice believes that he has been regulated prior to the instant invasion of his property to the satisfaction of all levels of the government of the State of Illinois and that the employees of the Town of Cicero do not have the internal knowledge or records of such compliance, or want to exercise brute force to show that they have the power and 1970 constitutional authority to do so. A license is defined as permission to do something which would otherwise be illegal; Justice, as a sovereign citizen doing business as a matter of liberty under the Declaration of Independence and the Constitution for the United States of America,

believes he has a right to engage in business without permission from anyone as stated in Hale v. Henkel, 201 U.S. 43, 74 (1906),

> "The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the state or to his
>
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>
> neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the state, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights."

And he has done that since 1980 without harm to anyone and with benefit to many, including the Town of Cicero.

This does not exhaust the issues to which Plaintiff Justice would like to state his beliefs and the facts upon which he relies.

This affidavit is made under 28 USC §1746.

_/S/_____John C. Justice_____

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AFFIDAVIT

Mike Woodward, pursuant to Matthew 5:34, states that on or about February 24, 2006, I was asleep in my room at 1699 South 55th Avenue when I was awakened by five or six police officers of the Town of Cicero with their pistols aimed at my eyes with their laser sights turned on, shining a red light into my eyes. They seized the shotgun that was on the floor beside my bed and handcuffed me with my hands behind my back. The Mexican officer who handcuffed me did it so forcefully that he cut my wrist. They took me and the shotgun downstairs.

The leader of the group that had come into the building, a man named Dennis, questioned the legality of the shotgun. The Mexican officer who had handcuffed me said, "Oh, they can have shotguns; I read that in the book."

They told me that the reason that they had come upstairs was that they had heard that "that was where the guns were." There was in fact only that shotgun in the room, but they came back later and searched the whole building while restricting me to a chair in one of the offices so I could not see what they were doing.

When they were done they told me to secure the building and leave, making me leave the building unprotected, and put signs up saying the building was closed by order of the Town of Cicero and that entry was prohibited. It was mid-winter
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and I had no place to stay.
This affidavit is made under 28 USC §1746.
Further affiant saith naught.

_/S/_____Mike Woodward _____

Document 89 in the Trial Court:
Order Denying Motion to Reconsider

United States District Court, Northern District of Illinois

Justice, et al. vs. Town of Cicero, et. al.

CASE NUMBER 06 C 1108

Judge Wayne R. Andersen

DOCKET ENTRY TEXT

Plaintiffs motion to reconsider [84] is denied. The court has carefully reviewed Plaintiffs motion. We find no reason to alter the memorandum opinion and order [81] granting Defendants' motion to dismiss. The case remains closed.

STATEMENT

This matter comes before the court on plaintiff John Justice's motion to reconsider the grant of defendants' motion to dismiss by Memorandum Opinion and Order of October 10, 2007. For the following reasons, the motion is denied.

In his motion to reconsider, Justice alleges that the police officers who served the administrative search warrant at his business engaged in a search that was beyond the scope of the search warrant; that the affidavit in support of the search warrant was "replete with falsehoods and half-truths," and, thus,

should not shield the police officers from liability for their actions; that the Second Amendment should apply in this case; and that the rates charged by the Town for water should be subject to antitrust laws. The court sees no basis for these arguments.

Justice's support for the beyond-the-scope argument is that officers found a shotgun in a small room above the main office, which was an area beyond the scope of the search warrant because it was "highly unlikely any work was being performed there with hazardous chemicals," and that the officers then searched specifically for guns. The court is not convinced that the guns were found in a search that was beyond the scope of the court-ordered search warrant.

Justice's second argument, that the affidavit in support of the search warrant was full of falsehoods, is belied by Justice's admission that, at the time the affidavit was filed, he did not have a, license to operate his business.

Justice's Second Amendment argument and his antitrust argument were addressed in the court's memorandum opinion and order.

The Motion to reconsider [84] is denied.

/S/ Wayne R. Andersen

Date: /S/ November 16, 2007

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOHN JUSTICE
and
MIKE WOODWARD,
Plaintiffs-Appellants
v.
THE TOWN of CICERO, et al.,
Defendants-Appellees

Appeal From
The United States District Court
For the Northern District of Illinois,
Eastern Division
Case No. 06 C 1108
Honorable Wayne R. Andersen

REPLY BRIEF OF PLAINTIFFS-APPELLANTS

John Justice,
in propria persona
d/b/a MICROCOSM
1699 South 55th Ave
Cicero, Illinois 60804
708-656-3250

Mike Woodward,
in propria persona
216 E 200 South
Brigham City, Utah
84302-2620

PLAINTIFFS-APPELLANTS' TABLE OF AUTHORITIES

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SUMMARY OF ARGUMENT.....1

ARGUMENT.....2

APPENDIX..... 24

CERTIFICATE OF CONFORMITY TO THE RULES FOR BRIEFS

CERTIFICATE OF SERVICE

SUMMARY OF ARGUMENT

The Standard of Review for the dismissal of this cause in the District Court is *de novo*.

1. Having Counsel for the Plaintiffs cannot preclude filing by the Plaintiffs.....2
2. The warrant was derived from an affidavit in which violations were alleged that an innocent affiant could not have known or suspected.....2
3. The Town does not refute Justice's claim that the closing of his business required an order from the Town President.....4
4. Intentional Damages.....5
5. The ordinance of the Town requiring licensing as applied to Justice for his business is unconstitutional, depriving Justice of a right secured under the Ninth Amendment.....6
6. The Second Amendment applies to the Town.....16
7. Not all citizens are privileged by the Fourteenth Amendment.....20

ARGUMENT

COUNSEL

U.S.A. v. Oreye, 263 F.3d 669 (7th Cir., 2001), cited by the Attorney for the Defendants in Document 74 of the Record, holds that a party may not be pro se and represented by counsel, although the *Oreye* trial court allowed Oreye to plead and his counsel continued to participate. The Trial Court in the instant case did not strike Appellant Justice's pleadings [Docket Entries 68, 69, 72, and 73] as requested by the Town, but did not address them in his order.

The Town now alleges that the constitutionality of the Town's gun ordinance was challenged first on appeal. (Appellee Br., Argument, Analysis of Issues/Claims Waived, Item I, p.4) The issue was raised in Docket Entry 68 and amply illustrated by Docket Entry 69, which were filed by Justice. Neither the Town nor *Oreye* can preclude Justice from making a record.

The only transcript of proceedings in the Record and Items 46 and 58 of the Civil Docket are representative of the course of the trial. If issues are not raised, they are waived. *Boyers v. Texaco Refining and Marketing, Inc.*, 848 F.2d 809, 811-812 (7th Cir. 1988) If Counsel for the Plaintiffs did not or would not raise issues, Plaintiffs have a right to raise them. Justice and Woodward fully appreciate the pleadings filed by counsel and acknowledge Judge Andersen's advice that if Justice did not get an attorney, he would dismiss the case. The plaintiffs

needed assistance of counsel. Justice has never practiced law; an essential element of the practice of law is the acceptance of a fee.

THE WARRANT

Plaintiff-Appellants have contended that the affidavit for search warrant that preceded the acts of the Town of Cicero and its employees contained prevarications. Courts routinely issue search warrants on the flimsiest of pretenses, and for the Appellants to contend that so disingenuous[111] a group of employees as those of the Town of Cicero did not believe every word of their sworn allegations is an exercise in futility, not unlike discussing theology with those who practice with abandon Mark 16:18, considering it a mandate rather than an assurance of divine protection. The Town had assistance of competent counsel, who made certain that every jot and tittle of the search warrant met appropriate standards, even going back–while the Town's

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[111] A polysyllabic word, so no one in the employ of the Town need feel offended. See the pleading which originally brought Appellant Justice before the Town of Cicero Court (Appendix, Item #1) in which the complaining witness called the business "Micro Sol, Inc," although the name over the door in foot-high letters was, and is, "MICROCOSM." Larry Hippert's sworn affidavit for the administrative search warrant states in ¶10 that "there is a sign on the door to the property stating that the business of 'Microsales' is located within the Property." The fraudulent water bills paid by Justice are addressed to "MICROSM INC" and have been addressed thusly forever and ever.

employees were in mid-invasion–to the court to add the legal address of Justice's building at 1801 South 55th Avenue as well as the logical address of 1699 South 55th Avenue. The Town wanted no part of its authority to enter to be challengeable.

Larry Hippert's affidavit alleges infractions of the Town code that were ***known*** by the Town, ***not*** suspected as violations of their code. For example, in ¶9 they state that the code provides that "Residential is precluded in M-1." The preparer of the affidavit must have known that Justice lived there for years beginning in 1976 and that Woodward was living there currently. Because the Town was aware of that, the remainder of the allegations of the affidavit were fabrications, not suspicions of violations.

The warrant was issued by a judge who was intentionally misinformed by the schemers behind the scenes who misled an employee to believe that he should swear out an affidavit that dangerous conditions existed in the Appellant's building so that they could mount a destructive assault suggested by another employee in 1991. (App., Doc. 2)

TOWN ORDINANCE

The Town's Business Ordinance at Sec. 26-40 Suspension or Revocation, subsection (a) supplied in the Record 38-3 by the Town states that,

> "When the conduct or operation of any business, occupation, activity or establishment, whether licensed or unlicensed, shall constitute a nuisance in fact and a clear and present danger to the public health, safety and general

> welfare or when the holder of any license shall have refused to furnish a sample of his goods for testing, **the president** shall be authorized to summarily order the cessation of business and the closing of the premises until the danger no longer exists." (Emphasis added.)

The Town has not rebutted Counsel for the Appellants allegation that procedure was not followed, nor has the Town claimed that the conditions precedent to such an order existed.

Intentional Damages

The District Court erred in dismissing the Appellants' complaint. The Appellants were damaged by the intentional torts of the Defendants. The suggestion made in the affidavit memorializing the statement to Town employees almost twenty years ago, (App. Doc. 2) was carried out to the letter–dragging Justice from his property before the eyes of his neighbors, leaving him handcuffed in the backseat of a squad car for twenty minutes before taking him to the Town lockup. Woodward's right to privacy secured under the Ninth Amendment was violated when the horde of police broke into his room, snatched the bedcover from his face, played laser sights on his eyes to get a reaction from him, and dragged him downstairs in handcuffs. (App. Doc. 3)

The Town seized Justice's property without justification on the pretext that "failure to get a business license" gives them possession of real property and the use thereof. They sealed the building with yellow "POLICE LINE, DO NOT CROSS" tape and posted signs prohibiting entry under penalty of fines of $500. After several days of stewing, Justice went to the Town Hall and asked for an application for a business license. The clerk snubbed him, apparently with no need for introduction on Justice's part, saying, "There's a fifty dollar fee to file it. It'll take two to three weeks to get out of Legal, *IF* they let you re-open at all." It was obvious to Justice that the Town, from the top to the

bottom of its bureaucracy, intended to ruin him, so he filed suit in the District Court. A month without production for his customers would not only damage Justice, it would put him out of business and damage his customers, who cannot go to the local hardware store to get the products that they order from him–there is a two- to four-week lag between placing an order and delivery of anticipated goods from any manufacturer to another for non-stock products–and would mean that they would find other suppliers if they could, or be permanently damaged. Justice had already told some highly-dependent customers what had happened because their deliveries were not forthcoming. His next-door neighbor was a customer and had seen what had happened. The neighbor and one other major customer have reduced their purchases from him to a few items that no one else makes, or use his commodity products only in emergencies. In continuing damage, a potential customer who came from St. Louis on March 28, 2008, to see if Justice could supply a product that is essential to his sales, declined to commit to purchasing when he reviewed Justice's relationship with the Town. Although Justice has been in business as a corporation, Microcosm, Incorporated, since 1964, and as an individual doing business under the name Microcosm since 1980, the effects of this demonstrative assault have damaged his relationship with suppliers and with those who work for him.

The counsel for the Town believes that the damage claims for Justice and for Woodward are

preposterous. They were carefully considered. If the Town can take 10 million of the municipal funds and buy a golf course in the names of its officers, the Town surely has sufficient disposable assets to pay for the tortious damages of its employees. They have funds to decree a stately pleasure dome on Cermak Road to replace the Town Hall that was doubled in area since Justice brought his business to Cicero in 1976. The doubled Town Hall was filled with "employees" whose cars filled all the parking area when combined with their spiffily painted squad cars and Police Auxiliary SUVs . The uniforms of their officers feature embroidered undies. Their ever-increasing exactions for taxes and fees are augmented by sales taxes from TIF (Tax Increment Financing) properties where shopping centers flourish. The areas that have been annexed into TIF areas include Justice's and homeowners' property from Cermak Road to Roosevelt, and Central to Laramie Avenues, all of which is available to the Town to increase its revenues under *Kelo v. New London*, No. 04-108 (S.Ct. 6/23/2005). The cash flow is undoubtedly invested in off-budget budgets, now that they understand that cash is more productive in CAFR investments than in Wisconsin golf clubs in their own personal names. Whatever an injured party demands in damages is of course determined by the trier of fact, not the Defendants' Counsel or the Plaintiffs.

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FREE OR LICENSED?

"I'm proud to be an American
Where at least I know I'm free....."
– *God Bless The USA* by Lee Greenwood

Just how free are Americans? Can they practice their religion without government interference as provided by the First Amendment?[1111] Or do self-chosen authorities have the right to define them as members of "cults" who live in "compounds" or "isolationists" who separate themselves from "modern" societies such as Sodom and Gomorrah? Can Americans engage in productive activity, making goods for sale to other manufacturers for the general good of society, without permission from anyone?

[1111] http://en.wikipedia.org/wiki/Ruby_Ridge#cite_note-OPRreportBeginning-1

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NOT TO KNOW WHAT HAPPENED
BEFORE WE WERE BORN
KEEPS US FOREVER A CHILD.
—Roman statesman and philosopher Marcus Tullius CICERO (106–43 BC)

Plaintiff Justice told members of the business licensing department of the Town of Cicero on three occasions that he was doing business as a matter of liberty under the Declaration of Independence and the Constitution for the United States of America, and that he did not have to pay them to work. Justice does not recall denying entry to the Business Licensing Department inspectors; perhaps they wanted to inspect, but Justice, aware that he had been repeatedly inspected by all levels of government from the Town to the County to the State to the federal government's OSHA and EPA, thought that the issue was licensing.

Justice relied upon ***Hale V. Henkel*** **201 U.S. 43, 26 S.Ct. 370, 50 L.Ed. 652** (1906) which distinguishes between the control government has over corporations ("artificial persons") and their officers, and the freedom of natural persons who are American citizens:

> "The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the state or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to

criminate him. He owes no such duty to the state, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights.

" Upon the other hand, the corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the state and the limitations of its charter. Its powers are limited by law. It can make no contract not authorized by its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation. There is a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers. It would be a strange anomaly

> to hold that a state, having chartered a corporation to make use of certain franchises, could not, in the exercise of its sovereignty, inquire how these franchises had been employed, and whether they had been abused, and demand the production of the corporate books and papers for that purpose. The defense amounts to this: That an officer of a corporation which is charged with a criminal violation of the statute, may plead the criminality of such corporation as a refusal to produce its books. To state this proposition is to answer it. While an individual may lawfully refuse to answer incriminating questions unless protected by an immunity statute, it does not follow that a corporation, vested with special privileges and franchises, may refuse to show its hand when charged with an abuse of such privileges." *Hale v. Henkel*, 201 U.S. 43, 75-76 (1906) (Emphasis added by underlining.)

The Declaration of Independence is part of the fundamental law of the United States. Whether the Town of Cicero and its employees and counsel believe it or not the Founders of the States of America held that

> .... "We hold these truths to be

> self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed," — .....

The Appellants did not waive their rights to Liberty and the pursuit of Happiness when they crossed the borders of the Town of Cicero and have not contracted away any of their rights secured under the Declaration of Independence and the Constitution for the United States of America. The Town of Cicero is granted Home Rule status under the laws of the State of Illinois, which gives them the power to legislate through the Town Council, passing ordinances that would have the force and effect of State statutes although lesser municipalities are subject only to State statutes. The Town Code, Sec. 26-31 provides: "No person shall engage in or manage or operate any business, profession or occupation within the town unless a town license shall have been procured from the license officer," but that does not grant the Town control over natural persons. The inclusion of natural persons within the general term of "person" is contrary to the plain meaning of the dictum in ***Hale v. Henkel*** quoted above, the intent of the Declaration of Independence, and the Constitution for the United States of America.

Not every violation of rights and liberties is worth troubling the courts, or every conscious citizen would spend all his waking hours and most of his dreams and nightmares in litigation, though the Town and its minions have no qualms about collecting every cent they can through color of law. Appellant Justice could pay the extortion of a fee for a license, and would have given up principle and honor and done so had it not become evident to him that the Town intended to ruin him. (R.o.A.1:06-cv-01108, Document 1, page 9, ¶19.)

The security that is afforded an individual under ***Hale v. Henkel*** has its foundation in the Ninth Amendment to the Constitution for the United States of America:

> "The Enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

A careful analysis and elaboration of the Ninth Amendment is found in *The Forgotten Ninth Amendment*, by Bennett B. Patterson. His work is sullied only by the introduction by Roscoe Pound,[11111] Dean of the Harvard Law School, whose comments controvert the history, intent of the Framers of the Constitution, and application of the Ninth Amendment.

[11111] Roscoe Pound, http://en.wikipedia.org/wiki/Roscoe_Pound, contains a short biography and discussion of his "sociological jurisprudence" view and national influence.

Appellants Justice and Woodward each have rights that they have not contracted away: the right to privacy; the right to conduct business and to work without having a fee extorted from them; the right to the quiet enjoyment of ones property; the right to be left alone. The Ninth Amendment covers all those "unenumerated rights" and limitless others. We are not subject to "street tax" on the assumption by the Town of Cicero that there is a hitherto untapped source of revenue; that we owe them something for living above a subsistence level. If one seeks and is issued a "license," that may be mandatory for corporations. Anyone who wants to be harried and "regulated" by ignorami is welcome to join those who follow the other sheep into the fold.

Be it remembered:

> "LICENSE. In the law of contracts. A permission, accorded by a competent authority, ***conferring the right to do some act which without such authorization would be illegal***, or would be a trespass or a tort. (Citations omitted.) Also the written evidence of such permission." Black's Law Dictionary, 2nd Edition, West Publishing Company, St. Paul, Minnesota, 1910 (Emphasis added by italics.)

If one is licensed, does that provide security to work?

> "Totally without warrant (both literally and figuratively), the officers conducted

> inventory searches extending over many hours and placed indelible markings on various of plaintiffs' auto parts. On another occasion they entered a licensee's premises in a claimed search for a law violator without a warrant and without any semblance of a showing of probable cause. It is clear that they viewed licensees as fair game, engaged in an activity that in their view was almost malum in se (Tr: 29: 'I licensed you. I can go anywhere I want.').
>
> "True enough, administrative abuses are not a ground for invalidating the statute or regulation under which such abuses occur. However in this case they corroborate the existence and effect of the "unbridled discretion" that led the *Marshall v. Barlows* Court to conclude that a warrant was constitutionally required." *Bionic Auto Parts and Sales, Inc. v. Fahner*, 518 F.Supp. 582, 586 (N.D. Ill., 1981)

The rapacious aggressiveness of "law enforcement" is set forth in *Bruce v. Beary*, 498 F.3d 1232 (11th Cir., 2007) where a car parts and body shop owner was arrested, his business closed for a month, the employees barred from the premises. Seven pallets of his records and other business property were hauled away and never returned despite court orders

to return everything. It will doubtless please the Town of Cicero to know that on remand for trial, the jury found for the defendants. Bruce's business was incorporated and, as a highly-regulated business where "chopshops" are thriving criminal enterprises, was licensed.

Appellant Justice has a right to work, and to engage in business, and the Town of Cicero cannot by ordinance or other legislation deprive him of those rights.

Patterson, *supra*, quotes Corpus Juris Secundum

> "The Constitutions are not the sources of our personal rights. Our theory of government is that the people, in full possession of inherent, inalienable rights, have formed the government in order to protect these rights, and have incorporated them into the organic law as a shield against unwarrantable interference by any department of governments." 16 C. J. S. 578, paragraph 199

He cites *Spann vs. City of Dallas*, 111 Texas 350, 212 S. W. 513, as supporting this view:

> "To secure their property was one of the great ends for which men entered into society. The right to acquire and own property, and to deal with it and use it as the owner chooses, so long as the use harms nobody, is a natural right. It

> does not owe its origin to constitutions. It existed before them. It is a part of the citizen's natural liberty—an expression of his freedom, guaranteed as inviolate by every American Bill of Rights."

and Patterson quotes John Adams, the second great President of the United States, assur(ing) the people as follows:

> "You have rights antecedent to all earthly governments; rights that cannot be repealed or restrained by human laws; rights derived from the Great Legislator of the Universe."

Before the Colonies declared their independence from England, the majority of our people wanted only to have their status as Englishmen equivalent to that in the mother country. Thomas Paine's *Common Sense* motivated them to see themselves as sovereigns with equal standing as George III.

Paine surmised that if one traced the lineage of kings to their origins, one discovered that

> "we should find the first of them nothing better than the principal ruffian of some restless gang, whose savage manners of preeminence in subtlety obtained him the title of chief among plunderers; and who by increasing in power, and extending his depredations, overawed the quiet and defenseless to purchase their safety by frequent contributions."

Paine concluded,

> "We ought to reflect, that there are three different ways by which an independency may hereafter be effected; and that one of those three, will one day or other, be the fate of America, viz. By the legal voice of the people in congress; by a military power; or by a mob: It may not always happen that our soldiers are citizens, and the multitude a body of reasonable men; virtue, as I have already remarked, is not hereditary, neither is it perpetual. Should an independency be brought about by the first of those means, we have every opportunity and every encouragement before us, to form the noblest, purest constitution on the face of the earth. We have it in our power to begin the world over again."

After the Declaration of Independence, our forefathers fought a war that freed them from subservience to any other sovereign; the States united under the Articles of Confederation. The citizens of the States jealously guarded their liberties. When the trade among the States was hampered primarily by the limitless issuance of paper currency by the States, there was a call for a convention which met in Philadelphia, and on September 17 of 1787, after meeting in secret for the summer, they brought forth the Constitution for the United States.

For the Constitution to become the Supreme Law of the Land, [Article VI, Clause II] nine States of the original thirteen had to ratify it for it to be established among those nine. There was lengthy public argument both verbally and by letters in the press and in pamphlets as to the merits and hazards of the Constitution. The citizenry feared the loss of their liberties to a federal government that would become all-powerful. George Mason, prominent in the framing of the Constitution, refused to sign it because it did not have a Bill of Rights. [App., Doc. 4] The assurance of James Wilson [App., Doc. 5] that anything that is not granted is prohibited (See Article I, Section 8 of the Constitution.) did not persuade the cautious citizenry.

It is likely that the Constitution would never have been ratified had it not been for the efforts of James Madison [App., Doc. 5] in discussion in committee and open sessions of the House to add the Bill of Rights as Amendments to the Constitution. Foremost among the assurances that allowed the ratification of the Constitution is the Ninth Amendment, affirming all the liberties of the sovereign Americans and securing them so long as they recognize and assert them.

DAMAGES TO WOODWARD

Woodward was damaged by being recklessly endangered as described below, and by being evicted from his tenure as live-in watchman, and Justice continues to be damaged by having no one to watch his building.

In Roe v. Wade, 410 U.S. 113, at 93 S.Ct. 705, 35

L.Ed.2d 147 (1973), Justice Blackmun delivering the opinion of the Court said:

"Appellant would discover this right in the concept of personal 'liberty' embodied in the Fourteenth Amendment's Due Process Clause; or in personal marital, familial, and sexual privacy said to be protected by the Bill of Rights or its penumbras, see Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965); Eisenstadt v. Baird, 405 U.S. 438 (1972); id., at 460, 92 S.Ct. 1029, at 1042, 31 L.Ed.2d 349 (White, J., concurring in result); or among those rights reserved to the people by the Ninth Amendment, Griswold v. Connecticut, 381 U.S. 479, at 484 (1965):

"The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. See Poe v. Ullman, 367 U.S. 497, 516—522, 81 S.Ct. 1752, 6 L.Ed.2d 989 (dissenting opinion). Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers 'in any house' in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to

his detriment. The Ninth Amendment provides: 'The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.' "

Rights Secured under the Second Amendment

It was error for the District Court to leave the Town in possession of Justice's weapons. Although Justice's residence is in Tennessee, many of his arms were in Illinois. The Town police had no warrant to search for weapons, did not see weapons in plain sight, and broke into Plaintiff Woodward's room where he was sleeping, found a shotgun beside his bed, and awakened him by playing the laser sights of their pistols on his eyes. If all the anti-gun activists do not think that is wanton and reckless endangerment, is it only because anything that Big Brother and the Nanny State do is permissible as we hobble in lockstep to the New World Order?

The possession of arms is protected under the Second Amendment to the Constitution for the United States. As part of the Constitution, the Supremacy Clause of the Constitution, Article VI, Clause 2, mandates

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be

bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Apparently Chief Justice Marshall, a non-attorney, in ***Barron v. Baltimore*, 32 U.S. 243** (1833) had forgotten about that part of the Constitution when he said that the Amendments in the Bill of Rights were restrictions on the federal government and not upon the States. The opinion was written by him and the record shows neither dissent nor concurrence. It is easy to forget or to opine for political purposes. It has happened repeatedly and in recent memory occurred in the money cases of the 1930's when the Roosevelt administration confiscated the money of the citizens of the United States, claiming that "they" had to have it as "backing" for their worthless paper currency, which as of 9/11/2008 trades at less than fifty pre-1982 copper cents per single federal reserve note.

Any modification of the right of the citizens to keep and bear (carry, exposed or concealed) is an infringement of a constitutionally secured right, equally applicable to the States as all the other properly ratified Amendments to the Constitution, independent of the 14th Amendment. The legislatures of the States and the Town Council of the Town of Cicero may pass statutes and ordinances which violate the Constitution, and the statutes and ordinances may be operative for years as accepted "law," but the rulings of the courts have invalidated many of them time after time. The Revised Statutes of Illinois, which contains the whole record, is rife with sections which are no longer part of the statutes

because they have been declared unconstitutional by State or federal courts.

The Town of Cicero presumes to infringe upon the rights secured under the Second Amendment by its ordinance requiring registration and payment of a fee for each weapon. The registration of weapons is an evil beyond comprehension. We have been propagandized for decades on the danger of guns, on how the only source of happiness and security is to prohibit their possession. This overwhelming propaganda is intended to herd us into the New World Order where we will be defenseless against government which is less and less our servant and more and more our master. Registration of weapons is a prelude to confiscation and ethnic cleansing. It is infringement of the Second Amendment to the Constitution for the United States and must be declared unconstitutional. In the celebrated cases *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir., 2007 Senior Circuit Judge Silberman) which was affirmed in *District of Columbia v. Heller*, 554 U.S. _____ (2008), S.Ct. 07-290, the Courts have finally addressed the issue of the right of individuals to keep arms.

Heller falls short of confirming the rights secured by the Second Amendment: Heller asked to be licensed and registered by the city, and one only gets what he asks for. As Justice pointed out in R.68 and as is documented in R.69, registration of arms is an evil infringement of the Second Amendment; "licensing" of a right makes it a "privilege" and is equivalent to the disclosure of the possession of arms that occurs in

registration, except that one pays a fee to contract away a right, which is voluntary–no one can lawfully ***compel*** an American citizen to sign away a right.

> "As courts have been presented with the need to enforce constitutional rights, they have found means of doing so. That was our responsibility when *Escobedo* was before us and it is our responsibility today. Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda v. Arizona*, 384 U.S. 436, 491 (1966)

The Appellants were damaged by the lawless acts of the Town, and with respect to the invasion of Woodward's privacy and seizure of Justice's arms which were NOT "in plain sight," were subjected to warrantless search and seizure; the Town Actors converted the "administrative search warrant" into a General Warrant which the Constitution under the Fourth Amendment prohibits:

> "and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or **things to be seized**." (Emphasis added.)

The police had no authority to search for anything. They certainly had no authority under any warrant to return after the "business inspection" employees

had left, and ransack Justice's possessions while Woodward was ordered to sit in a corner so he could not see what they were doing. There was no provision in the two "Administrative Search Warrants" for them to do anything. The platoon of police who accompanied the Grand Inquisitor might have justified their presence if they were raiding a crime scene, but not an American citizen who professed only his right to life, liberty, and the pursuit of happiness. Their seizures of Justice's property were unwarranted, in violation of the Second Amendment, and the Court must order the return of Justice's property.

The Town offers remedies for recovery of property. Justice did not begin this vendetta. Should he spend his time becoming an Illinois resident, getting a FOID, paying fees to the Town to register under their unconstitutional infringement of the Second Amendment, plead before their ALJ, appeal to the Circuit Court of Cook County, etc., etc? "Law Enforcement Officers" believe they can do anything with impunity; it is as nightmarish as the Utah Taser Arrest, linked here:

http://www.youtube.com/watch?v=IMaMYL_shxc

An authority who knows how to handle such matters tells us what should be done but his instruction video may no longer be available. He recommended going through administrative law procedures, taking a day or two to comply. All because the driver asked irritably what he had done.

PROPER FORUM

The Plaintiffs had standing to bring their cause

before the District Court as an Article III Court, as set forth in ***Lujan v. Defenders of Wildlife***, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)

> "Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements: First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally-protected interest which is (a) concrete and particularized, see *id. (Allen v. Wright,* 468 U.S. 737), , at 756, 104 S.Ct., at 3327; *Warth v. Seldin,* 422 U.S. 490, 508, 95 S.Ct. 2197, 2210, 45 L.Ed.2d 343 (1975); *Sierra Club v. Morton,* 405 U.S. 727, 740-741, n. 16, 92 S.Ct. 1361, 1368-1369, n. 16, 31 L.Ed.2d 636 (1972); [1] and (b) "actual or imminent, not 'conjectural' or 'hypothetical,' " *Whitmore, supra,* 495 U.S., at 155, 110 S.Ct., at 1723 (quoting *Los Angeles v. Lyons,* 461 U.S. 95, 102, 103 S.Ct. 1660, 1665, 75 L.Ed.2d 675 (1983)). Second, there must be a causal connection between the injury and the conduct complained of; the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 41-42,

96 S.Ct. 1917, 1926, 48 L.Ed.2d 450 (1976). Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Id.*, at 38, 43, 96 S.Ct., at 1924, 1926. "

As to the first element of an Article III complaint under ***Lujan v. Defenders of Wildlife***, the Appellants were engaged in legally protected interests. Justice was engaged in the use of his property and Woodward had Justice's permission to be within the confines of his property. Secondly, Justice lost business at that time and suffered the loss of the use of his property, the loss of the continuing expenses of building utilities and real estate taxes, the moral obligation to pay the workers who produce the goods which he buys, converts, and sells while the Town of Cicero had exercised its unconstitutionally unlimited powers and sealed his building, without following their Code on procedure for closing businesses. Woodward no longer has a place to stay and has returned to Utah. Thirdly, if the Court upholds the dismissal of the Appellants' complaint, Justice will be returned to the tender mercies of the Town of Cicero whose Business Department Manager has mailed by certified mail, return receipt requested, XXX envelopes containing YYY complaints demanding fines of 250.00 if paid timely or 500.00 if not paid; Woodward will be unable to return from his exile in Utah to the comfort of being a full-time volunteer guard. Dismissing this appeal will result in the total ruin of Justice's business, the loss of work for several productive

members of society, the loss of useful products for other manufacturers and their ultimate consumers. Justice and Woodward rest on the other issues raised in the initial brief.

WHEREFORE, Appellants Justice and Woodward, certifying that the foregoing is true to the best of their knowledge and belief in those areas where they individually have such knowledge, pray this Honorable Court order the return of property and remand this case for trial.

Respectfully submitted,

___/Signed/_____

John Justice, in propria persona
d/b/a MICROCOSM
1699-1801 South 55th Avenue
Cicero, Illinois 60804-1817
708-656-3250, FAX-6049

____/Signed/_____

Mike Woodward, in propria persona
216 E 200 South
Brigham City, Utah 84302-2620

APPENDIX[111111]

Special Appearance.....Doc. 1
Affidavit of Sept 4, 1991..... Doc. 2
Affidavit of Mike Woodward from file copy
..... Doc. 3
Article and Engraving of George Mason from Page 338 of The Bill of Rights and the States cited in the Treatises in the Table of Authorities at Page III
.....Doc.4
Pp 26-29, *ibid*, re James Wilson and James Madison
.....Doc.5

[111111]To Appellants' Reply Brief

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Document 1
TOWN OF CICERO

TOWN OF CICERO	)	
	)	Case Nos. AO-56880,
vs.	)	AO-120898,
	)	AO-120899
MICRO SOL INC	)	
	)	
	)	

SPECIAL APPEARANCE

Now comes John Justice, recipient without prejudice of the Citations and Notices of Hearing in the above enumerated cases, appearing pursuant to 735 ILCS 5/2-301, Special Appearance.
John Justice is not a party to these Citations and is appearing only because if he does not, the party serving the citations would falsely assert that a default judgement had been entered against him.
Wherefore, John Justice prays these citations be dismissed with prejudice.
Respectfully submitted,
John Justice
Printed from file dated 2/16/2006 10:52 p.m.

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Document 2

AFFIDAVIT

John C. Justice being sworn deposes and says that:

On September 4, 1991, during hearings in the trial of County of Cook v. John Justice, Case No. 2-20659 etc., a man with reddish blond hair was present. The Court went into recess for a pre-trial conference, and when we returned, and before the judge re-entered the Court, the man with reddish-blond hair was talking heatedly with Lt. Maltese of the Town of Cicero Fire Department. He said that they should go in and bring some of these people out in handcuffs; that that would be impressive to people. He remarked on the fire that caused twenty-five deaths in Hamlet, North Carolina, on September 3, 1991, which was reported in the newspapers on September 4th, and said that he was really concerned about you guys, meaning the firemen. When all the hearings were concluded the same man was talking heatedly but inaudibly with Lt. Maltese and Rudolph Trejo, Jr., of the Cook County Environmental Control Department.

Further your affiant saith naught.

John C. Justice

Sworn to and subscribed before me this 4th day of September, 1991.

"OFFICIAL SEAL"
DOLORES GAJDA
Notary Public, State of Illinois
My Commission Expires 6/15/93

Notary Public

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AFFIDAVIT

John C. Justice being sworn deposes and says that:
On September 4, 1991, during hearings in the trial of County of Cook v. John Justice, Case No. Z-20659 etc., a man with reddish blond hair was present. The Court went into recess for a pre-trial conference, and when we returned, and before the judge re-entered the Court, the man with reddish-blond hair was talking heatedly with Lt. Maltese of the Town of Cicero Fire Department. He said that they should go in and bring some of these people out in handcuffs; that would be impressive to people. He remarked on the fire that caused twenty-five deaths in Hamlet, North Carolina, on September 3, 1991, which was reported in the newspapers on September 4th, and said that he was really concerned about you guys, meaning the firemen. When all the hearings were concluded the same man was talking heatedly but inaudibly with Lt. Maltese and Rudolph Trejo, Jr., of the Cook County Environmental Control Department.
Further your affiant saith naught.

_/S/_____
John C. Justice

Sworn to and subscribed before me this _/4/_th day of September, 19_/91/__.

__/Dolores Gajda/___
Notary Public

"Official Seal"
DOLORES GAJDA
Notary Public, State of Illinois
My Commission Expires 6/15/93

THE WALL STREET JOURNAL, WEDNESDAY, SEPTEMBER 4, 1985

Fire Kills 25 At Chicken Plant Of Imperial Food

HAMLET, N.C. (AP) — Fire broke out yesterday at a chicken processing plant, killing at least 25 people and injuring more than 85, authorities said. Witnesses said a fryer at the Imperial Food Products plant caught fire about 8:30 a.m. The company makes chicken nuggets and marinated chicken breasts sold at fast-food restaurants and grocery stores.

Employees and witnesses said one exit was locked, and one was temporarily blocked by a truck.

"They were screaming, 'Let me out!' " said passer-by Sara Breeden. "They were beating on the door."

The interior of the building was gutted.

A woman who was in the canteen said people rushed in yelling, "Fire! Fire!" The door from the canteen to the outside was locked, and a man had to break the door open so those inside could escape.

Carolyn Ramwater, a plant worker, said she heard people screaming, and "I saw a big puff of black smoke and I started running for the back door." The door was blocked by a delivery truck, and workers had to wait for it to be moved, she said.

"When I arrived, I didn't have hope for anybody coming out of here," said a police officer who would not give his name. "They're beating all the odds."

The officer was trying to control a growing crowd of worried relatives, friends and onlookers.

Several witnesses said employees couldn't escape because of locked doors.

O'Neil Patrick said he was walking near the plant and saw a man trying to help workers. He said only one door was open and that was in the front of the building.

He said he could hear people screaming on the other side of a locked door and inside the truck that was backed up to a loading dock door.

People were banging on the walls of the building and truck screaming, "Let me out!" he said.

Mr. Breeden was passing by the building when he saw his sister-in-law's head sticking out of a small window that wasn't big enough for her or others with her to get through.

He held her head so she could get air until workers broke down the door. She survived.

The Richmond County Chamber of Commerce said Imperial Food employs between 100 and 145 people. Police Capt. Robert Brinson said 100 employees were at the

Trans World Music Corp.

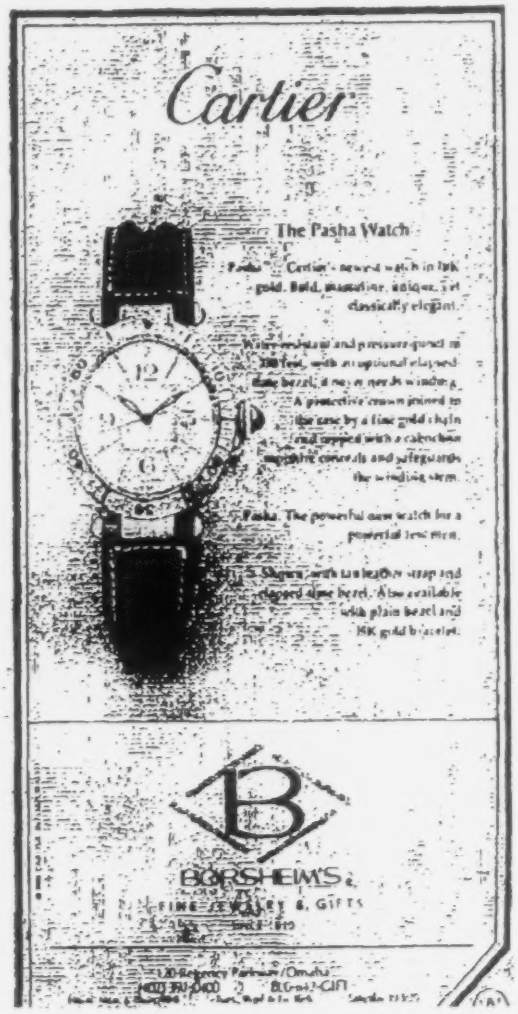
Fiscal 2nd-Period Profit Fell 91% Despite 14% Sales Rise

Trans World Music Corp. said fiscal second-quarter sales increased 14%, but earnings plunged 91% because of a drop in sales at stores open for at least one year and because of the costs of opening 81 new stores.

Trans World Music, based in Albany, N.Y., said sales for the quarter ended Aug. 3 rose to $83.2 million, from $72.9 million a year earlier. But sales of stores open for at least one year decreased by 7%, it said. That performance contributed to a decline in net income to $12,000, or two cents a share, from $1.6 million, or 18 cents a share, in the 1984 quarter.

For the first six months of the fiscal year, the company reported a loss of $440,000, or five cents a share, compared with a profit of $4.1 million, or 45 cents a share, a year earlier. In the same period, sales increased 17% to $142.2 million from $103.5 million.

Trans World Music Corp. sells prerecorded music and video products in stores in the eastern U.S.



BEST AVAILABLE COPY

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THE WALL STREET JOURNAL

WEDNESDAY, SEPTEMBER 4, 1991

Fire Kills 25 At Chicken Plant of Imperial Food

HAMLET, N.C. (AP)–Fire broke out yesterday at a chicken processing plant killing at least 25 people and injuring more than 45, authorities said. Witnesses said a fryer at the Imperial Food Products plant caught fire about 8:30 a.m. The company makes chicken nuggets and marinated chicken breasts sold at fast-food restaurants and grocery stores.

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"They were screaming, 'Let me out!'" said passer-by Sam Breeden. "They were beating on the door."

The interior of the building was gutted.

A woman who was in the canteen said people rushed in yelling, "Fire! Fire!" The door from the canteen to the outside was locked, and a man had to break the door open so those inside could escape.

Carolyn Rainwater, a plant worker, said she heard people screaming, and "I saw a big puff of black smoke and I started running for the back door." The door was blocked by a delivery truck and workers had to wait for it to be moved, she said.

"When I arrived, I didn't have hope for anybody coming out of here," said a police officer who would not give his name. "They're beating all the odds."

The officer was trying to control a growing crowd of worried relatives, friends and onlookers....

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Document 3
AFFIDAVIT

Mike Woodward, pursuant to Matthew 5:34, states that on or about February 24, 2006, I was asleep in my room at 1699 South 55th Avenue when I was awakened by five or six police officers of the Town of Cicero with their pistols aimed at my eyes with their laser sights turned on, shining a red light into my eyes. They seized the shotgun that was on the floor beside my bed and handcuffed me with my hands behind my back. The Mexican officer who handcuffed me did it so forcefully that he cut my wrist. They took me and the shotgun downstairs. The leader of the group that had come into the building, a man named Dennis, questioned the legality of the shotgun. The Mexican officer who had handcuffed me said, "Oh, they can have shotguns; I read that in the book."

They told me that the reason that they had come upstairs was that they had heard that "that was where the guns were." There was in fact only that shotgun in the room, but they came back later and searched the whole building while restricting me to a chair in one of the offices so I could not see what they were doing.

When they were done they told me to secure the building and leave, making me leave the building unprotected, and put signs up saying the building was closed by order of the Town of Cicero and that entry was prohibited. It was mid-winter and I had no place to stay.

This affidavit is made under 28 USC §1746.

Further affiant saith naught.

___/S/_____Mike Woodward

George Mason (1725-1792),a wealthy landowner in Fairfax County, was a selftaught lawyer. He served in the revolutionary conventions of 1775 and 1776, where he was the principal author of the Virginia Declaration of Rights and state



constitution. Although he was a prominent Anglican, Mason supported disestablishment. Elected to the Constitutional Convention, Mason took an active role

in the debates, supporting a strong national government. As the powers of the central government grew and the South's economic protections lessened, he started to have serious doubts about the evolving draft constitution. Mason urged that a committee be appointed to draft a bill of rights. When the Convention rejected this proposal, Mason refused to sign the new Constitution. While in Philadelphia, he wrote his objections to the Constitution on the back of his copy of the printed draft constitution. These objections, beginning "There is no declaration of rights," were copied by other Antifederalists and circulated in manuscript throughout the country for two months before being printed in newspapers, broadsides, and pamphlet anthologies. When he returned home from the Constitutional Convention, he was coolly treated by his friends (including George Washington), most of whom were Federalists. Sensing that he could not be elected from his home county, he stood for and was elected to the state ratifying convention from neighboring Stafford County. He joined Patrick Henry in leading the Antifederalist opposition to the Constitution in the convention, arguing that amendments including a bill of rights should be adopted before the Constitution was ratified. The legislature elected him as one of Virginia's first U.S. senators, but he declined the appointment because of ill health and his distaste for public office. He was dissatisfied with the limited nature of James Madison's amendments to the Constitution in the first federal Congress, characterizing them as "a tub to the whale" that diverted attention away from the serious structural amendments recommended by the Virginia

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convention. Etching by H. B. Hall, 1872. Courtesy of the State Historical Society of Wisconsin.

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DOCUMENT 5

THE BILL OF RIGHTS AND THE STATES

.....that what remained should be preserved: how great a proportion of natural freedom is necessary to be yielded by individuals, when they submit to government, I shall not now enquire. So much, however, must be given up, as will be sufficient to enable those, to whom the administration of the government is committed, to establish laws for the promoting the happiness of the community, and to carry those laws into effect. But it is not necessary, for this purpose, that individuals should relinquish all their natural rights.

Some are of such a nature that they cannot be surrendered. Of this kind are the rights of conscience, the right of enjoying and defending life, &c.

Others are not necessary to be resigned, in order to attain the end for which government is instituted, these therefore ought not to be given up. To surrender them, would counteract the very end of government, to wit, the common good. From these observations it appears, that in forming a government on its true principles, the foundation should be laid . . . by expressly reserving to the people such of their essential natural rights, as are not necessary to be parted with.

These principles were fundamental and were embodied "in all the constitutions of our own states . . . when the pulse of liberty beat high" just a decade earlier, "Brutus" asserted. Now, however, he was astonished "that this grand security, to the rights of the people, is not to be found" in the proposed Constitution. Federalists were clearly on the

defensive; they needed an explanation for their failure to produce a bill of rights.

James Wilson's Explanation

During the first week of October 1787, Pennsylvanians campaigned for their elections to the state Assembly. On October 6, James Wilson—Pennsylvania's most prominent lawyer and a signer of the Declaration of Independence and one of the most influential delegates to the Constitutional Convention—gave the first public explanation of the new Constitution by a former delegate to that Convention. Wilson faced the issue squarely. Americans, he said, had to understand the basic difference between the state constitutions and the Constitution of the United States.

When the people established the powers of legislation under their separate governments, they invested their representatives with every right and authority which they did not in explicit terms reserve; and therefore upon every question, respecting the jurisdiction of the house of assembly, if the frame of government is silent, the jurisdiction is efficient and complete. But in delegating foederal powers, another criterion was necessarily introduced, and the congressional authority is to be collected, not from tacit implication, but from the positive grant expressed in the instrument of union. Hence it is evident, that in the former case every thing which is not reserved is given,

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but in the latter the reverse of the proposition prevails, and every thing which is not given, is reserved.

Once Antifederalists realized this important distinction, Wilson believed they would accept the omission of a federal bill of rights. Furthermore, he argued, a federal bill of rights would be dangerous, because it would imply that the federal government had "some degree of power" in every area, even though no specific powers were delegated.

James Madison agreed with Wilson. In a letter to Thomas Jefferson on October 17, 1787, Madison asserted that he favored a bill of rights if one could be written without giving the federal government enormous powers by implication. If Congress was prohibited from infringing upon the freedom of the press, for instance, it would be able to assume authority to regulate the press in "appropriate ways." Rights would be better protected if Congress was limited to delegated powers, Madison said; a bill of rights would only open a congressional door to implied powers.

Federalists throughout America adopted Wilson's theory of reserved powers as the "official" explanation for the lack of a federal bill of rights. Antifederalists attacked it. In the *Massachusetts Gazette* of January 14, 1788, "Agrippa," called the reserved powers theory "a mere fallacy, invented by the deceptive powers of Mr. Wilson." Arthur Lee of Virginia, then serving in New York City as a member of the Confederation's Board of Treasury, accused Wilson of sophistry. In the first of his six

"Cincinnatus" essays, published in the *New York Journal* on November 1, 1787, Lee called Wilson's quaint conundrum "a distinction without difference." Why should Americans accept Wilson's "play on words" when a real safeguard could easily have been incorporated into the new Constitution just as it had been in the Articles of Confederation? Why was this important provision stipulating the federal-state relationship omitted from the new Constitution? Why was this vital relationship left to assumption and interpretation?

Antifederalists found Wilson's argument flawed by the prohibitions on the federal government incorporated in the Constitution itself. Writing to Samuel Adams on October 27, Richard Henry Lee argued that every one of the constitutional restrictions on Congress "proves the Rule in Conventional ideas to be, that what was not reserved was given." Thomas Jefferson, serving in Paris as U.S. minister to France, wrote to James Madison in December 1787 that Wilson's theory was "a gratis dictum, opposed by strong inferences from the body of the instrument." In early November "Federal Farmer," the most influential Antifederal pamphleteer, asserted that the ninth and tenth sections in Article I of the proposed Constitution (those sections that limit the actions of the state legislatures and Congress) "are no more nor less, than a partial bill of rights." He encouraged his readers to extend 27

this guarantee further "as a part of this fundamental compact between the people of the United States and their federal rulers."

Only occasionally did Federalists come to Wilson's aid with reasoned arguments. More often than not, they merely praised him and accepted his interpretation. In the Boston *Independent Chronicle* of December 27, "Remarker," maintained that "notwithstanding all that hath been said of it," the theory of reserved powers was "perfectly true." The Convention's omission of a bill of rights "was wisdom itself, because it implies clearly that the people who are at once the *source* and *object* of power, are already in full possession of all the rights and privileges of freemen. Let the people retain them forever."

In *The Federalist* No. 44, James Madison attempted to explain why certain rights were explicitly protected in the Constitution while most others were not. He admitted that bills of attainder and *ex post facto* laws were already contrary to the social compact theory, to principles of sound legislation, and to some of the state bills of rights and constitutions. Nevertheless, Madison argued, "additional fences against these dangers ought not to be omitted. Very properly, therefore, have the Convention added this constitutional bulwark in favor of personal security and private rights." Madison did not explain why it was proper to safeguard these rights but not others. Despite the reserved powers theory, Federalists realized that the lack of a federal bill of rights presented the major obstacle to the ratification of the Constitution.

The First State Ratifying Conventions

Pennsylvania was the first state to call and hold a ratifying convention.

Weeks before that convention assembled on November 20, 1787, it was apparent that two-thirds of the delegates supported the Constitution. Consequently the outcome of the convention was never in doubt. Because Federalists did not wish to give the impression of unfairness, they allowed Antifederalists almost a month for the ratification debate. Federalists maintained that the Constitution had to be adopted *in toto* or rejected completely. The convention had no authority to propose amendments or ratify conditionally. Federalists called for a complete adoption of the Constitution to revive the economy, restore America's honor, and preserve the Union. The lack of a federal bill of rights, they argued, presented no danger. Quite the contrary—a bill of rights would endanger liberties because all rights could not be enumerated. What would happen to those rights that were omitted? Would they be forfeited? James Wilson again led the Federalist argument: "A bill of rights annexed to a constitution is an

enumeration of the powers reserved," he declared. "If we attempt an enumeration, everything that is not enumerated is presumed to be given. The consequence is, that an imperfect enumeration would throw all implied power into the scale of the government; and the rights of the people would be

rendered incomplete."

Federalist Thomas McKean, chief justice of the Pennsylvania Supreme Court, argued that bills of rights were first written to protect the liberties of the people from all-powerful feudal kings. A bill of rights had no place in a republic where the people, either directly or indirectly, elected all office holders. Did the people, asked McKean, need a bill of rights to protect themselves from themselves? No, he answered. If the people were dissatisfied with their government, they possessed the power to alter it; and the new Constitution provided a means of enacting amendments.

The Federalist No. 84, written by Alexander Hamilton, would reiterate this argument. Bills of rights, Hamilton declared, have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants.

Here, in strictness, the people surrender nothing, and as they retain every thing, they have no need of particular reservations. 'WE THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do *ordain* and *establish* this constitution for the United States of America.' Here is a better recognition of popular rights than volumes of those aphorisms which make the principal figure in several of our state bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government.

Antifederalists were dissatisfied with their opponents' arguments. They pointed to the general welfare clause and the necessary and proper clause to show that Congress possessed unlimited authority

under the Constitution. If ever a dispute arose over whether Congress had overstepped its authority, the federal government, armed with the supremacy clause of the Constitution, would make the final decision. How could the states or the people expect fair treatment when their federal rulers possessed all power and were to be the final arbiters in disputed cases?

By December 12, most of the issues in contention had been debated thoroughly. Before taking the final roll call, however, Antifederalist Robert Whitehill submitted petitions from 750 inhabitants of Cumberland County praying that the Constitution not be adopted without a bill of rights. Whitehill then presented a bill of rights consisting of fifteen amendments to the Constitution. The final amendment—a paraphrasing of the second article of the Articles of Confederation—specifically limited Congress to those powers expressly delegated to it in the Constitution. Whitehill moved that the con-

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CIRCUIT RULE 31(e) CERTIFICATION

I, John Justice, hereby certify that Appellants' Reply Brief in non-scanned PDF format of the Brief and a short Appendix, believed to be virus-free, were sent this on this 10th day of September 2008 by the internet and that (a) one original and fourteen paper copies of the Appellants' Reply Brief will be delivered on September 11, 2008 to:

United States Court of Appeals
for the Seventh Circuit
219 S. Dearborn, Room 2722
Chicago, IL 60604

(s) _____
John Justice, in propria persona
Dated: September 9, 2008

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

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John Justice, in propria persona

Dated: September 9, 2008

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I, John Justice, state that PLAINTIFFS-APPELLANTS' REPLY BRIEF

was served on the party as listed below, by placing the document in an envelope, postage prepaid, and delivering it to the United States Postal Service on this 10th day of September 2008:

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Attorneys for Defendants-Appellees

(s)_____

John Justice, in propria persona

Dated: September 9, 2008

A – 117
In the
United States Court of Appeals
For the Seventh Circuit
No. 07-3990

JOHN JUSTICE and MIKE WOODWARD,
Plaintiffs-Appellants,
v.
TOWN OF CICERO, et al.,
Defendants-Appellees.

Appeal from the United States District Court
for the
Northern District of Illinois, Eastern Division.
No. 06 C 1108—Wayne R. Andersen, Judge.

SUBMITTED OCTOBER 23, 2008 —DECIDED AUGUST 14, 2009

Before BAUER, WOOD, and TINDER, Circuit Judges.

WOOD, Circuit Judge.

After examining the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record.
See FED. R. APP. P. 34(a)(2).

On February 24, 2006, police officers from the Town of Cicero, Illinois ("the Town"), searched a building owned by John Justice pursuant to

a search warrant. A state judge had issued the warrant after finding probable cause that Justice was violating nine municipal ordinances, including one prohibiting the operation of a business without a license and one addressing the improper storage of hazardous chemicals. During the search, the police found six unregistered guns. The Town confiscated the guns, issued six tickets to Justice for possession of an unregistered firearm, and shut down the business for one week.

Justice responded by filing suit against the Town, Dennis Doe and Jerry Jarosz (city officials allegedly in charge of the business license department), and several unidentified Town employees. Michael Woodward, a security guard who worked for Justice, joined the suit.

In the Third Amended Complaint ("the Complaint"), Justice challenges the Town's business license ordinance, the Town's ordinance requiring registration of firearms, and the probable cause for the search of his business. Justice also tacks on an allegation that the Town's water department is violating federal and state antitrust law by requiring a separate water meter for his sprinkler system and by charging a minimum fee and imposing a 33% late fee. After methodically explaining the problems with each of Justice's allegations, the district court dismissed the entire complaint for failure to state a claim under FED. R. CIV. P. 12(b)(6). We agree with the district court and therefore affirm the judgment for the defendants.

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I

We review an order granting a Rule 12(b)(6) motion to dismiss *de novo* and affirm if the complaint fails to include sufficient facts "to state a claim for relief that is plausible on its face." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Because we must "construe the complaint in the light most favorable to the plaintiff, accepting as true all well-pleaded facts alleged, and drawing all possible inferences in her favor" our analysis relies on the facts in the Complaint and the warrant, of which the district court took judicial notice. *Tamayo v. Blagojevich*, 526 F.3d 1074, 1081 (7th Cir. 2008).

Woodward's claim is easily eliminated. This court has no way of knowing the basis for Woodward's suit because his complaint is so sparse that it is impossible to discern any potential claim for relief, plausible or otherwise. Only one paragraph in the complaint mentions Woodward:

> Plaintiff Mike Woodward, the business' 24 hour security guard was taking a nap at the tin raid and suffered the start of his life when awakened by the commands of police officers with the laser sights pointed at his eyes. The officers intended to fire the weapons if he

had moved mere inches.

Complaint, ¶ 46. The district court interpreted this paragraph as alleging a claim of excessive force under 42 U.S.C. § 1983, but even under that generous reading the court found that the facts failed to establish a plausible claim. We agree. With Woodward out of the picture, we

focus the rest of this opinion on the four theories raised by Justice.

Count one alleges civil rights violations by the Town and its officers; Justice has sued the officers in their individual and official capacities. To state a § 1983 claim, Justice must establish that the defendants deprived him of a right secured by the U.S. Constitution or laws. See *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970). Justice alleges the following four violations: (1) violation of his Fourth Amendment rights because the business license ordinance is overbroad and not tied to a valid regulatory purpose; (2) violation of his Fourth Amendment rights because the officers executing the warrant knew or should have known that the warrant lacked probable cause; (3) violation of his Second Amendment right to bear arms because the Town prohibits the possession of unregistered firearms; and (4) violation of his Fourteenth Amendment rights (for reasons unstated).

We first address the business licence ordinance.

The Town requires that any person engaging in or managing a business obtain a business license. CICERO, ILL., CODE OF ORDINANCES § 26-31 (2008). Illinois law permits the Town to require businesses to have licenses. The Town qualifies as a home-rule unit under the Illinois Constitution, ILL. CONST. art. VII, § 6(a), and so it has the power to regulate for the protection of public health, safety, morals, and welfare, and the power to license. Illinois explicitly grants municipalities the authority to issue and revoke licenses. 65 ILCS 5/11-60-1. Justice argues that the purpose of the licensing ordinance is limited to revenue

gathering, but the district court found that the purpose was more broadly to protect the general health and welfare of the Town's citizens. We agree with the district court.

Justice also argues that the ordinance is overbroad; he relies on § 26-326, which states, "Without first having obtained a license for the operation of such a business from the town, no person shall conduct or operate any of the following: . . . (22) Manufacturing or treatment or distribution or storage of any products of any nature whatsoever." Justice asserts that this section requires a homeowner storing gas for a lawnmower to obtain a business license. But this argument ignores the context of the subsection, which indicates that it pertains only to people operating a business. So read, there is no conceivable argument that the business license

ordinance has strayed beyond constitutional boundaries. As Justice has not alleged facts showing that the business ordinance violates federal law, his § 1983 claim fails.
Because count two reiterates Justice's argument about the business license ordinance, it fails to state a claim for the same reasons.

Justice's claim that the search violated the Fourth Amendment was properly rejected because he admits that the police searched his business pursuant to a warrant.
The district court took judicial notice of the fact that a judge of the Cook County Circuit Court issued that warrant upon a finding of probable cause to believe that Justice was violating numerous local ordinances. The issuing judge relied on the affidavit of Larry Hibbert, a
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business license and building inspector for the Town. The affidavit included the following assertions: Hibbert has many years of experience in the chemical industry and inspecting manufacturing and industrial properties; Hibbert smelled chemicals while at Justice's business, and, based on his experience, believes the chemicals are likely solvents; Justice has previously refused to allow inspections, in violation of an order from an administrative judge; Justice admitted to operating a business without a license.
Justice has attempted to attack the basis of the

state judge's probable cause finding, but to no avail. He argues that Hibbert lacked the experience to identify the smell as a solvent, but this argument makes little sense given Hibbert's asserted "many years of experience" in the chemical industry. Justice also alleges that Hibbert intentionally excluded a 2005 finding by the Town's fire chief that Justice's building substantially complied with building and fire codes. Even if we assume that Hibbert deliberately excluded the information, an inspection almost a year old does not negate probable cause based on events subsequent to the inspection—particularly when those events include Justice's admitting to violating one of the nine ordinances and refusing to permit an inspection despite the order of an administrative judge. Justice's final argument—that the warrant lacks probable cause because Hibbert spelled the name of the business as "Microsales" rather than "Microcosm"— similarly fails to undermine the finding of probable cause. Finally, Justice claims that the warrant is invalid because it was amended to list a second address for

the same building without referencing the first warrant or Hibbert's affidavit. This is simply false; the issuing judge explicitly stated that he issued the amended warrant after examining the original warrant. Taking into account these incontrovertible facts, we conclude that Justice is not entitled to proceed on his claim that his Fourth Amendment rights were violated by the

search.

The district court noted additional reasons why the Complaint fails to state a claim for a violation of Justice's Fourth Amendment rights. In order to do so for his official-capacity and municipal liability theory, Justice had to show that the violation occurred because of "(1) the enforcement of an express policy of the City, (2) a widespread practice that is so permanent and well settled as to constitute a custom or usage with the force of law, or

(3) a person with final policymaking authority." *Latuszkin v. City of Chicago*, 250 F.3d 502, 504 (7th Cir. 2001); see *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690-91 (1978). The Complaint's sole mention of a policy or practice appears in Paragraph 30: "[t]he Town of Cicero has a policy and practice of shutting down businesses that do not purchase business licenses." Justice's failure to allege any policy or practice causing the allegedly illegal search is fatal to his claim against the Town and the officials in their official capacity. The individual-capacity claims against Dennis Doe and Jerry Jarosz cannot proceed for a different reason. While the Complaint names Doe and Jarosz in paragraph 3, it never mentions any action by either man; in fact, the Complaint never mentions them again. Additionally, as the district court recognized, qualified immunity protects officers who "reason-

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ably but mistakenly conclude that probable cause is present." *Burns v. Reed*, 44 F.3d 524, 529 (7th

Cir. 1995) (quoting *Hunter v. Bryant*, 502 U.S. 224, 227 (1991)). Given Hibbert's affidavit and the finding of probable cause by the judge, these two officers are each entitled to qualified immunity.

We note as well that the Town has argued, as an alternative ground for affirmance, that Justice's Fourth Amendment claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). We have not relied on that ground for two reasons. First, it is unclear from the record exactly what convictions or sentences Justice received, and without knowing that, we cannot tell how much of a Heck bar exists. Justice's complaint alleges that he was charged and prosecuted, but he also mentions receiving tickets. We know from the affidavit attached to the warrant that an administrative judge, before the search, found Justice in violation of three city ordinances, but there is no evidence of an administrative order finding Justice in violation of the gun ordinance. We do not know if the police just issued him tickets before confiscating the guns, or if he was also later found guilty of violating the ordinance in some quasi-judicial proceeding. Second, this court has not decided whether an administrative proceeding or a finding of a violation of a city ordinance triggers the *Heck* bar. Cf. *Swiecicki v. Delgado*, 463 F.3d 489 (6th Cir. 2006) (applying the Heck bar where plaintiff was convicted of violating a disorderly conduct ordinance); *Zhai v. Cedar Grove Municipality*, 183 F. App'x 253 (3d Cir. 2006) (applying the bar to plaintiff's guilty

plea for violating a disorderly conduct ordinance). Because we
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do not know the type of conviction or sentence involved here, we save for another day a more complete consideration of this issue.

We now turn to Justice's Second Amendment claim. The district court found that the Town's ordinance requiring the registration of all firearms did not violate Justice's constitutional rights because the Second Amendment does not regulate the activities of a state or its subdivisions, relying on this court's decision in *Quilici v. Village of Morton Grove*, 695 F.2d 261, 269-71 (7th Cir. 1982). It noted that the Illinois Constitution subjects the right to bear arms to the police power, and that Illinois permits municipalities to regulate the possession of firearms to protect the public health, safety, and welfare. *See Sklar v. Byrne*, 727 F.2d 633, 637 (7th Cir. 1984).
Since the date of the district court's opinion (October 10, 2007), there has been some water under the Second Amendment bridge. First, the Supreme Court decided *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), which struck down an ordinance of the District of Columbia that flatly prohibited the possession of handguns. Second, this court decided *National Rifle Ass'n of America v. City of Chicago*, 567 F.3d 856 (7th Cir. 2009), in which we concluded that the Second

Amendment (under current Supreme Court law) is not one of the parts of the Bill of Rights that has been incorporated by the Fourteenth Amendment and thereby made applicable to the states. In *NRA*, we aligned ourselves with the Second Circuit's decision in *Maloney v. Cuomo*, 554 F.3d 56 (2d Cir. 2009), and expressed disagreement with the Ninth
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Circuit's reasoning in *Nordyke v. King*, 563 F.3d 439 (9th Cir. 2009).

If, as we have held, the Second Amendment does not apply to the states and their subdivisions, then Justice has no case. Even if we are wrong and the Ninth Circuit has proven to be the better predictor of the Supreme Court's rulings, there is a critical distinction between the D.C. ordinance struck down in Heller and the Cicero ordinance. Cicero has not prohibited gun possession in the town. Instead, it has merely regulated gun possession under § 62-260 of its ordinance. The Town does prohibit the registration of some weapons, but there is no suggestion in the Complaint or the record that Justice's guns fall within the group that may not be registered. See § 62-261. Nor does Heller purport to invalidate any and every regulation on gun use; to the contrary, the Court in *Heller* disclaims any such intent:

> Like most rights, the right secured

by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. . . . For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues. . . . Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to

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> cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. [FN26: We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive.]

128 S. Ct. at 2816-17 (citations omitted). Thus, even if we are wrong about incorporation, the Cicero ordinance, which leaves law-abiding citizens free to possess guns, appears to be

consistent with the ruling in *Heller*.

Justice also argues that Cicero's ordinance is unconstitutional as applied to him because he is a citizen of Tennessee. Justice's domicile, however, is irrelevant. The ordinance applies to the possession of unregistered guns physically present in the Town and Cicero is where Justice kept the six guns at issue here. The Complaint, in summary, does not state a claim for a violation of Justice's Second Amendment rights.

Justice also alleges a violation of the Fourteenth Amendment, but he fails to explain the basis for this claim. The Complaint does assert that the Town's search and later closing of his business were improper because the Town President has the power to shut down a business without a search under certain circumstances. See §2640(a). We do not know what that has to do with Justice's case. Even if we interpret this assertion as a due process argument, it is nonsensical. That the Town President can shut down a business does not mean the Town lacks the power otherwise to enforce its ordinances.
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In count three, Justice accuses the Town of violating federal and state antitrust laws because the water department (1) requires a separate water meter for his sprinkler system, (2) charges a minimum monthly fee for each meter, (3) charges a 33% late fee, and (4) charges a

"usurious interest rate." Complaint, ¶ 5. Justice's claim fails at the outset because the Town's conduct is immunized from both state and federal antitrust law. Under the Parker doctrine, the actions of municipalities fall outside the reach of the federal antitrust laws if the municipality can "demonstrate that [its] anticompetitive activities were authorized by the State 'pursuant to state policy to displace competition with regulation or monopoly public service.' " *Hallie v. Eau Claire*, 471 U.S. 34 (1985) (quoting *Lafayette v. La. Power & Light Co.*, 435 U.S. 389, 413 (1978)). Illinois similarly exempts local governments from antitrust law "to the extent their activities are either (1) expressly or by necessary implication authorized by Illinois law and (2) within traditional areas of local government activity." 50 ILCS 35/1. Water supply is within a traditional area of local government activity and is expressly authorized by Illinois law; Illinois explicitly empowers local governments to "make all needful rules and regulations concerning the use of water supplied by the waterworks of the city or village" and to fix and collect water rates "as the corporate authorities may deem necessary or expedient . . . ." 65 ILCS 5/11-125-3. That is enough to protect the Town from both federal and state antitrust exposure.

Justice finally argues that requiring a separate meter for the sprinklers and charging such a high late fee and

minimum monthly fee exceed the Town's authority because the measures are not "necessary or expedient." We are not sure what kind of claim this is: substantive due process? taking? antitrust? administrative? Any way we look at it, however, it is plain to us that Justice has failed to state a claim in this case. The federal judiciary is not the body charged with setting fees for Cicero's water service, nor are we the ones who need to set the price for collection on delinquent accounts. Illinois law authorizes the Town to select the necessary measures to distribute water and otherwise to run this business.

Count four requires no additional discussion. In it, Justice asks for injunctive relief, punitive damages, and a receiver. These requests assume that he has prevailed on the antitrust claims he has tried to raise in count three.

Count four thus falls along with count three.

* * *

We AFFIRM the district court's judgment for the defendants.

8-14-09

No. 07-3990

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOHN JUSTICE
and
MIKE WOODWARD,
Plaintiffs-Appellants
v.
THE TOWN of CICERO, et al.,
Defendants-Appellees

Appeal From The United States District Court
For the Northern District of Illinois, Eastern Division
Case No. 06 C 1108
Honorable Wayne R. Andersen

PETITION FOR REHEARING EN BANC

John Justice,
in propria persona
d/b/a MICROCOSM
1699 South 55th Avenue,
Cicero, Illinois 60804
708-656-3250

Mike Woodward,
in propria persona
216 E 200 South
Brigham City, Utah 84302-2620

(1) The full names of every party that an attorney represented in the case are
John Carter Justice and Mike Woodward
(2) The names of all attorneys who have appeared for the parties in the case are:
Thomas M. Arnett, Esq.,
who prepared the Appellants' initial Brief and withdrew.

John Justice and Mike Woodward v. Townof Cicero, *et al.*
(3) There are no plaintiff corporate parties.

___/ s/_____
John Justice, in propria persona
Dated: August 27, 2009

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STATEMENT OF THE COURSE OF PROCEEDINGS AND DISPOSITION OF THE CASE

Appellant Justice has been in business since 1964. In 1976, he moved the business to the Town of Cicero. Since 1980 he has been doing business under an assumed business name in compliance with the Illinois statute. In February of 2006 Town employees came to his door and told him he did not have a license. Justice replied that he did not need a license; he was doing business as a matter of liberty under the Declaration of Independence and the Constitution for the United States of America.

The head of the Business License Department came and was told the same thing. A complaint was issued and Justice responded by Special Appearance; the complaint did not apply to him and was dismissed.

The Town sent in a swat team with two attorneys and two successive administrative search warrants, which Justice did not get to read. The mob of police and employees spread out; police went upstairs to Plaintiff Woodward's room, pried open the door, and shined their pistol laser sights on his eyes until he woke up. They handcuffed him and seized the shotgun that was beside his bed.

The police told Justice that he had to go with them to sign a receipt for the shotgun. They searched him, handcuffed him, and kept him at the police lockup till 10:00 p.m. and after asking him if he had any more guns and he declined to answer, the captain or lieutenant told the patrolmen to go back to Justice's building and "tear that place apart." They had Plaintiff Woodward sit under arrest while they ransacked Justice's property. They prepared a receipt for

fourteen guns including an antique shotgun with Damascus barrels that is a gift from Justice's Father. They issued six complaints for six of the weapons before they got writer's cramp. They told Plaintiff Woodward that he could not stay there and told him to lock the building and leave. It was the 24th of February and he is homeless.

The building had yellow tape and signs prohibiting entry under penalty of 500 dollars fine. This happened on Friday, payday. On or about Monday, Justice went to the Business License office and asked for a license application. Justice was told, without having identified himself, "There's a fifty dollar application fee. It'll be two to three weeks before it gets out of legal–***IF*** they let you open again at all."

Justice went to a computer and drafted and filed the initial complaint. The trial judge said Justice must get an attorney or he would dismiss the case. The attorney was not adversarial and the case was dismissed. On

appeal he filed the initial brief without any advice and consent. The Town filed its Reply Brief, and the Appellants' Reply Brief was filed by the appellants themselves.

The Court of Appeals ruled that he District Court had properly dismissed the case. The Appellants are filing for a rehearing *en banc*.

QUESTIONS SUPPORTING REHEARING EN BANC
Pursuant to Rule 35(b)(1)(B):

The fundamental questions of exceptional importance to be addressed in deciding to grant this petition for rehearing are:

1. Does the Seventh Circuit's holding in *U.S.A. v. Oreye*, 263 F.3d 669 (7th Cir., 2001) deny due process to plaintiffs or defendants whose counsel will not provide the assistance that the plaintiffs want?
2. Does the Second Amendment to the Constitution for the United States require incorporation under the 14th Amendment to have application within the States?
3. Does registration of arms infringe the Second Amendment to the Constitution for the United States?

ARGUMENT

1.

The initial paragraph of the opinion is neither accurate or factual. That paragraph may well have been written by the inspector Larry Hippert. The Court has not considered the pleadings presented by the plaintiffs, having relied only on the efforts of their hired counsel, whose pleadings were not wholly endorsed by the plaintiffs, for example, the assertion that "a homeowner storing gas for a lawnmower should obtain a business license", and Plaintiff Woodward "suffered the fright of his life" may be a florid description but it hardly reflects Woodward's reaction as recounted in his affidavit which was appended to the Appellants' Reply Brief. The whole of Justice's affidavit filed as Document 87 in the trial court and appended to Appellants' reply brief should be read and considered especially. The Town of Cicero has maliciously damaged Justice and his business and the damage continues to this day. Justice did not "admit he had no business license", he asserted, "I'm doing business as a matter of liberty under the Declaration of Independence and the Constitution for the United States of America, and I don't have to pay you to work." He told them that three separate times, and the third time was a charm: the whole Town came in with a swat team and carried him off in handcuffs and locked the building down. Justice thought

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he should crawl on his hands and knees to the Town and apply for a license–to do something that he had an absolute right to do of his own free will, secured by the rights guaranteed in the Ninth Amendment. He was

rebuffed in the business office as recounted in the original complaint, and he had no alternative to filing suit.

It is a denial of due process on the part of the three-judge panel to fail to consider plaintiffs' additional pleadings in the trial court and the plaintiffs' Reply Brief, however firmly the Court considers *U.S.A. v. Oreye* to be applicable.

> "Fundamental requisite of 'due process' is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 336, 70 S.Ct. 652, 94 L.Ed. 865 (1950)

Those pleadings asserted that the injuries to the plaintiffs were violations of the Ninth and Second Amendments to the Constitution for the United States, and Plaintiff Woodward was ~~for~~ recklessly endangered when his privacy was invaded without warrant, there being no item in the administrative search warrant which provided for searching for anything other than the

alleged business violations, and however many uniformed and non-uniformed police were present, there were no weapons "in plain sight" for them to seize; their looting was not a legal search.

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"and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or **things to be seized**." (Emphasis added.)
Partial quotation of the Fourth Amendment

Cicero has no "laws" prohibiting the possession of guns; Cicero's ordinance requiring registration and payment of a 70-dollar fee per year for each gun is an infringement of the Second Amendment to the Constitution for the United States.

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."
Miranda v. Arizona, 384 U.S. 436, 491 (1966)

2.

The Appellants' Reply Brief included in its appendix documents related to the Bill of Rights, without which the Constitution would not have been ratified. When taken with this vibrant discussion by the citizenry, who were as much in fear of the federal government's potential for tyranny as sapient

citizens are today, and with the Supremacy Clause of the Constitution, Article VI, Clause II, the Bill of Rights, most certainly the Second Amendment, were demanded by the States, and would be endorsed as applicable to them. John Marshall's opinion declaring the Bill of Rights to be applicable only to the federal government is commented upon in the Reply Brief.

3.

Among the objected pleadings filed by Justice is a DVD produced by Jews for the Preservation of Firearms Ownership, an hour-long video titled ***Innocents Betrayed***, which tells of the 100 million people who have been killed in the past century because of gun registration. When one considers that, for example, in the State of Illinois, its Constitution, Article XII, which concerns the Militia,

> "SECTION 1. MEMBERSHIP
> "The State militia consists of all
> able-bodied persons residing in the State
> except those exempted by law."

one might expect the citizenry to have arms to serve when needed, and in view of the horrors documented in ***Innocents Betrayed,*** to resist all efforts at registering because a RIGHT as secured in the Second Amendment is not a

privilege, and rights, if maintained and asserted, are not taxable or subject to payment of fees (if "fees" are in some way distinguishable from taxes).
The appellants are aware that the federal government has set fees as licenses for the possession of certain arms and their accessories, but these are infringements of the right to keep and bear arms.

> "Illegitimate and unconstitutional practices get their first footing...by silent approaches and slight deviations from legal modes of procedure." *Boyd v. United States*, 116 U.S. 616, 635 (1886).

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Woodward and Justice have not just been toyed with; they have been damaged, and to uphold the acts of these petty tyrants and their boilerplate mailorder ordinances is unconscionable. These issues have been argued in the Reply Brief, and argued better there than here. The full panel should read it and re-hear this appeal.

__/s/_____
John Justice,
in propria persona
d/b/a MICROCOSM
1699 South 55th Avenue
Cicero, Illinois 60804
708-656-3250

__/s/_____
Mike Woodward,
in propria persona
216 E 200 South
Brigham City, Utah
84302-2620

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Order Denying Petition for Rehearing
ORDER DENYING REHEARING EN BANC

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

September 22, 2009

Before

WILLIAM J. BAUER, Circuit Judge
Diane P. Wood, Circuit Judge
John Daniel Tinder, Circuit Judge

No. 07-3990

John C. Justice and Mike Woodward,
Plaintiffs-Appellants,
v.
TOWN OF CICERO, DENNIS DOE, JERRY J. JAROSZ, et al.,
Defendants-Appellees

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

No. 06 C 1108

Wayne R. Andersen, Judge.

ORDER
Appellants filed their Petition for Panel

Rehearing and Petition for Rehearing En Banc on September 2, 2009. No Judge asked for a vote on the petition for rehearing *en banc*, and all members of the panel have voted to deny the petition for rehearing. Accordingly,

IT IS ORDERED that the petition for rehearing and petition for rehearing *en banc* is Denied.

Opinions Below

The Memorandum Opinion and Order of the United States District Court for the Northern District of Illinois, Eastern Division, filed October 10, 2007, in case #06-C-1108, granting defendants' motion to dismiss the complaint under FED. R. CIV. P. 12(b)(6).

An Order denying a motion to reconsider was filed November 16, 2007.

The Opinion of the United States Court of Appeals for the Seventh Circuit, in case #07-3990, decided August 14, 2009, affirming the Memorandum Opinion of the District Court.

The Order of the United States Court of Appeals for the Seventh Circuit, issued September 22, 2009, denying rehearing en banc.

Jurisdiction

The Opinion of the Seventh Circuit sought to be reviewed was filed August 14, 2009. The Order denying the petition for rehearing *en banc* was filed September 22, 2009.

This Court has jurisdiction to review the issues under 28 U.S.C. § 1254(1).

Federal Constitutional and Statutory Provisions Involved

Preamble to the Constitution for the United States of America

"**We the People of the United States**, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." (Emphasis added.).....5

4. The Constitution for the United States of America, Article III, § 2, reads in relevant part: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution.....xii, 1

1. The Constitution for the United States of America, Article. V., ...5

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, ***shall be valid to all Intents and Purposes, as Part of this Constitution***, when ratified by the

Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate. (Emphasis added.)

The Constitution for the United States of America, Article. VI. Clause 2, ...6

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, ***shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding***. (Emphasis added.)

The Constitution for the United States of America, Amendment II. .....i, ix, 3, 4, 8

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

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The Constitution for the United States of America, Amendment IV. .....ii, 9
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and ***particularly describing the place to be searched, and the persons or things to be seized***. (Emphasis added.)

The Constitution for the United States of America, Amendment V. , reads in relevant part: "No person shall be...deprived of life, liberty, or property, without due process of law...." .....ii, 7, 9

The Constitution for the United States of America, Amendment IX.
The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.
.....ii, 6, 7, 8

Federal Law 18 U.S.C. 926 (2) (a): No such rule or regulation prescribed after the date of the enactment of the Firearms Owners Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms

owners, or firearms transactions or disposition be established. Nothing in this section expands or restricts the Secretary's authority to inquire into the disposition of any firearm in the course of a criminal investigation.

Report of the Subcommittee on the Constitution of the Committee on the Judiciary, United States Senate, 97th Congress, Second Session (February 1982), a bipartisan subcommittee (consisting of 3 Republicans and 2 Democrats) of the United States Senate investigated the Second Amendment and reported its findings. The report stated:

The conclusion is thus inescapable that the history, concept, and wording of the second amendment to the Constitution of the United States, as well as its interpretation by every major commentator and court in the first half century after its ratification, indicates that what is protected is an individual right of a private citizen to own and carry firearms in a peaceful manner.

STATE CONSTITUTION CITED
Constitution of the State of Illinois, Article XII

> "**§ 1. Membership.**
> "The State militia consists of all able-bodied persons residing in the State except those exempted by law."

TOWN ORDINANCES INVOLVED IN THE CASE
DIVISION 3. REGISTRATION OF FIREARMS
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DIVISION 3. REGISTRATION OF FIREARMS
Sec 62-256. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ammunition means cartridge cases, shells, projectiles including shot, primers, bullets, propellant powder, or other devices or materials designed or intended for use in a firearm or destructive device.

Antique firearm means any firearm, including but not limited to any firearm with a matchlock,

flintlock, percussion cap or similar type of ignition system, which is incapable of being fired or discharged; or any firearm manufactured before 1898 for which cartridge ammunition is not commercially available and possessed as a curiosity or ornament or for its historical significance or value.

Assault ammunition means any ammunition magazine having a capacity of more than 15 rounds of ammunition. However, such term shall not include the following:

(1) Antique firearms;
(2) Any device used exclusively for line throwing, signaling, or safety and required or recommended by the United States Coast Guard or Interstate Commerce Commission;
or
(3) Any device used exclusively for firing explosives, rivets, stud cartridges, or any similar industrial ammunition incapable of use as a weapon.
Assault weapon means any of the following weapons:

(1)
Assault rifles:
AK 47 type;
AK 47S type;
AK 74 type;
AKS type;
AKM type;
AKMS type;
84S1 type;
ARM type;

84S3 type;
HK91 type;
HK93 type;
HK94 type;
G3SA type;
K1 type;
86S type;
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86S7 type;
87S type;
Galil type;
Type 56 type;
Type 565 type;
Valmet M76 type;
Valmet M78 type;
M76 counter sniper type;
FAL type;
L1A1A type;
SAR 48 type;

AUG type;
FNC type;
Uzi carbine;
Algimec AGMI type;
AR180 type;
MAS 223 type;
Beretta BM59 type;
Beretta AR70 type;
CIS SR88 type;
K2 type;
AR100 type;
M24S type;
SIG 550SP type;
SIG 551SP type;
Australian automatic arms SAR type;
SKS type with detachable magazine;
Colt AR-15;
Springfield Armory SAR-48;
Springfield Armory BM-59;
Bushmaster Auto Rifle;
Auto-Ordnance Thompson M1;
Ruger Mini 14/5F;
Federal XC-900 and XC450;
Feather AT-9 Auto Carbine;

Goncz High Tech Carbine;
Auto-Ordnance Thompson 1927A1;
Iver Johnson PM30 P Paratrooper;

(2)
Assault pistols:
Uzi type;
Heckler & Koch Sp-89 type;
Australian Automatic Arms SAP type;
Spectre Auto type;
Sterling Mark 7 type; and
(3) Any weapon that the director of public safety defines by regulation as an assault weapon because the design or operation of such weapon is inappropriate for lawful use.
Corrections officer means wardens, superintendents and keepers of prisons, penitentiaries, jails or other institutions for the detention of persons accused or convicted of an offense.

Crime of violence means any felony committed while armed with a weapon as defined in 720 ILCS 5/33A-1, as amended.

Director means the director of the department of public safety or his designated representative.

Duty-related firearm means any weapon which is authorized by any law enforcement agency to be utilized by its personnel in the performance of their official duties.

Firearm means any weapon which will or is designed to or restored to expel a projectile by the action of any explosive; the frame or receiver of any such device; or any firearm muffler or silencer.

Handgun means a firearm designed to be held and fired by the use of a single hand, and includes a combination of parts from which such firearm can be assembled.

Machine gun means any firearm from which eight or more shots or bullets may be discharged by a single function of the firing device.

Organization means partnership, company, corporation or other business entity or any group or association of two or more persons united for a common purpose.

Peace officer means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses.

President means the president of the town or his designee.

Sawed-off shotgun means a shotgun having a barrel of less than 18 inches in length or a firearm made from a shotgun if such firearm is modified and has an overall length of less than 26 inches or barrel of less than 18 inches in length.

Security personnel means special agents employed by a railroad or public utility to perform police functions: guards of armored car companies, watchmen, security guards and persons regularly employed in a commercial or industrial operation for the protection of persons employed by or property related to such commercial or industrial operation.

Short-barreled rifle means a rifle having any barrel less than 16 inches in length, or a modified firearm if such firearm as modified has an overall length of less than 26 inches or any barrel of less than 16 inches.

(Code 1958, § 38-25; Ord. No. 60-93A, § 1, 7-13-1993; Ord. No. 131-04, § 1, 6-22-2004)

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Cross references: Definitions generally, § 1-2.

Sec. 62-257. Authority of director of public safety.

The director of public safety shall have the authority to promulgate rules and regulations for the implementation of this division and to prescribe all forms and the information required thereon.

(Code 1958, § 38-46; Ord. No. 60-93A, § 1, 7-13-1993)

Sec. 62-258. Acquisition or possession prohibited by law.

Nothing in this division shall make lawful the acquisition or possession of firearms or firearm ammunition that is otherwise prohibited by law.

(Code 1958, § 38-47; Ord. No. 60-93A, § 1, 7-13-1993)

Sec. 62-259. Violation and penalty.

A minimum fine of $250.00 shall be imposed for a violation of this section, and a maximum fine of $750.00 shall be imposed for a violation of this section.

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(Code 1958, § 38-48; Ord. No. 60-93A, § 1, 7-13-1993; Ord. No. 271-03, § 15, 12-9-2003)

Sec. 62-260. Required.

(a) All firearms in the town shall be registered in accordance with this division. It shall be the duty of a person owning or possessing a firearm to cause such firearm to be registered. No person shall within the town possess, harbor, have under his control, transfer, offer for sale, sell, give, deliver, or accept any firearm unless such person is the holder of a valid registration certificate for such firearm. No person shall, within the town, possess, harbor, have under his control, transfer, offer for sale, sell, give, deliver, or accept any firearm which is unregisterable under this division.

(b) This section shall not apply to the following:

(1) Firearms owned or under the direct control or custody of any federal, state or local governmental authority maintained in the course of official duties.

(2) Duty-related firearms owned and possessed by peace officers who are not residents of the town.

(3) Duty-related firearms owned or possessed by corrections officers, provided that such corrections officers are not residents of the town.

(4) Firearms owned, manufactured or processed by licensed manufacturers of firearms, bulk transporters or licensed sellers of firearms at wholesale or retail, provided that such persons have all licenses as required by law.

(5) Any nonresident of the town participating in any lawful recreational firearm-related activity in the

town or on his way to or from such activity in another jurisdiction, provided that such weapon shall be unloaded and securely wrapped and that his possession or control of such firearm is lawful in the jurisdiction in which he resides.
(6) Full-time certified peace officers.
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(7) Private security personnel who possess or control any firearm or ammunition within the town, provided that such firearms shall be owned and maintained by the security firm employing such personnel and shall be registered by the security firm in accordance with this division.
(8) Those persons summoned by a peace officer to assist in making an arrest or preserving the peace while actually engaged in assisting the peace officer.
(Code 1958, § 38-26; Ord. No. 60-93A, § 1, 7-13-1993; Ord. No. 131-04, § 1, 6-22-2004)

Sec. 62-261. Unregisterable firearms.

No registration certificate shall be issued for any of the following types of firearms:
(1) Sawed-off shotguns, machine guns, or

short-barreled rifles.
(2) Firearm mufflers or silencers.
(3) Assault weapons, as defined in section 62-256.
(Code 1958, § 38-27; Ord. No. 60-93A, § 1, 7-13-1993)

Sec. 62-262. Application.

(a) No registration certificate required by this division shall be issued to any person unless such person:
(1) Shall possess a valid Illinois Firearm Owner's Identification Card in accordance with 430 ILCS 65/4, as amended;
(2) Has not been convicted of a crime of violence, as defined in this division as weapons offense, or a violation of this division;
(3) Has not been convicted within the five years prior to the application of any violation of:
a. Any law relating to the use, possession or sale of any narcotic or dangerous drug; or
b. The provisions of 720 ILCS 5/12-2(a)(1), as amended, for aggravated assault or any similar provision of the law of any other jurisdiction;
(4) Has vision better than or equal to that required to obtain a valid driver's license under the standards established by 625 ILCS 5/6-109; and
(5) Is not otherwise ineligible to possess a firearm under any federal, state or local law, statute or ordinance.
(b) All applicants for a registration certificate under this division shall file with the director of public safety, on a form provided, a sworn application in writing. The application shall include the following:
(1) Name, social security number, residential and

business address and telephone number of the applicant.
(2) The applicant's age, sex and citizenship.
(3) The applicant's state firearm owner's identification number.
(4) The name of the manufacturer, the caliber or gauge, the model, type and the serial
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number identification of the firearm to be registered.
(5) The source from which the firearm was obtained.
(6) Evidence that the applicant meets the criteria of this section.
(7) Two photographs of the applicant taken within 30 days immediately prior to the date of filing the application equivalent to passport size showing the full face, head and shoulders of the applicant in a clear and distinguishing manner.
(8) Such other information as the director of public safety shall find reasonably necessary to effectuate the purpose of this division and to arrive at a fair determination whether the terms of this division have been complied with.
(c) The director of public safety shall be the custodian of all applications for registration under this

division.
(Code 1958, § 38-28; Ord. No. 60-93A, § 1, 7-13-1993)

Sec. 62-263. Fingerprints.

When necessary to establish the identity of any applicant or registrant under this division, such applicant or registrant shall be required to submit to fingerprinting in accordance with procedures and regulations prescribed by the director of public safety.

(Code 1958, § 38-29; Ord. No. 60-93A, § 1, 7-13-1993)

Sec. 62-264. Application fees.

(a) A nonrefundable fee in the amount of $25.00 shall accompany each initial registration required by this division. The fee shall cover all firearms being registered under such
application.
(b) The registration fee shall not be applicable to duty-related handguns of peace officers domiciled in the town.
(Code 1958, § 38-30; Ord. No. 60-93A, § 1, 7-13-1993)

Sec. 62-265. Filing time.

(a) A registration certificate required by this division shall be obtained prior to any person taking possession of a firearm from any source.
(b) Any firearm located within the town must be registered pursuant to this division and in

accordance with rules, regulations and procedures prescribed by the director of public safety.
(Code 1958, § 38-31; Ord. No. 60-93A, § 1, 7-13-1993)

Sec. 62-266. Investigation.

Upon receipt of an application for registration of a firearm, the director of public safety shall investigate the information contained in the application to determine whether the application and firearm meet the requirements for registration under this division. Failure by the applicant or registrant to respond to investigation inquiries shall be sufficient grounds for denial or revocation.

(Code 1958, § 38-32; Ord. No. 60-93A, § 1, 7-13-1993)

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Sec. 62-267. Issuance of certificate.

(a) Upon receipt of a properly executed application for a firearms registration certificate and the report of the director of public safety, the president, upon

determining that the applicant has complied with this division, shall authorize the issuance of the registration certificate. Each registration certificate shall be in triplicate and shall bear a unique registration certificate number and shall contain such other information as may be necessary to identify the applicant and the firearm registered. The original of the registration certificate shall be retained by the director of public safety; the president and applicant shall each receive a copy.
(b) The president shall approve or deny any application for a registration certificate within a 120-day period beginning on the date the director of public safety receives the application unless good cause is shown.
(c) Any application for registration or renewal shall be held in abeyance when there is a criminal proceeding for a crime of violence or an offense involving a weapon or a proceeding to revoke firearm registration pending against the applicant until such proceeding has terminated.
For a renewal of registration the then-current registration shall be deemed continuing until the termination of such proceedings.
(d) Upon receipt of a registration certificate, each applicant shall examine the certificate to ensure that the information thereon is correct. If the registration certificate is incorrect in any respect, the registrant thereon shall return it to the director of public safety with a signed statement showing the nature of the error. The director shall correct the error, if it occurred through administrative error. If the error resulted from incorrect information contained in the

application, the applicant shall be required to file an amended application setting forth the correct information and a statement explaining the error in the original application. Each amended application shall be accompanied by a fee of $10.00.
(e) Each registration certificate authorized to be issued by the president shall be accompanied by a statement setting forth the registrant's duties under this division.
(Code 1958, § 38-33; Ord. No. 60-93A, § 1, 7-13-1993)

Sec. 62-268. Revocation; denial.

A firearms registration certificate shall be revoked or an application for registration shall be denied by the president when he finds that:

(1) Any of the criteria in section 62-262 are not currently met;
(2) The registered firearm is or has become an unregisterable firearm under the terms of section 62-261;
(3) The information furnished to the director of public safety on the application for registration certificate proves to be false; or
(4) The applicant or registrant has violated any of the sections of this division.
(Code 1958, § 38-34; Ord. No. 60-93A, § 1, 7-13-1993)

Sec. 62-269. Notice.

For the purposes of this division, service of any notice, finding or decision upon an applicant or

registrant shall be completed by any of the following methods:

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(1) Personal delivery of a copy of such notice, finding or decision to the applicant or registrant;
(2) Leaving a copy of such notice, finding or decision at the address identified on the application for registration or renewal; or
(3) Mailing a copy of the notice, finding or decision by certified mail with return receipt to the address identified on the application for registration or renewal, in which case service shall be complete as of the date the return receipt was signed.
(Code 1958, § 38-44; Ord. No. 60-93A, § 1, 7-13-1993)

Sec. 62-270. False information; forgery; alteration.

(a) It shall be unlawful for any person purchasing any firearm or ammunition or applying for any registration certificate under this division or, in giving any information pursuant to the requirements of this article, to knowingly give false information or

offer false evidence of identity.
(b) It shall be unlawful for anyone to forge or alter any application or registration certificate submitted, retained or issued under this article.
(Code 1958, § 38-41; Ord. No. 60-93A, § 1, 7-13-1993)

Sec. 62-271. Procedures for denial or revocation.

(a) If it is determined that an application for the registration required by this division should be denied or that a registration certificate should be revoked, the president shall notify the applicant or registrant in writing of the proposed denial or revocation, briefly stating the reason therefor.
(b) The applicant or registrant, within ten days after receiving notice of the proposed denial or revocation, may file with the president a written request for a hearing before a hearing officer.
(c) Within ten days of receipt of a request for hearing, the hearing officer shall give notice of a hearing to be held not less than five days after service of the notice on the person requesting the hearing. At the hearing, the applicant or registrant may submit further evidence in support of the application for initial registration or to continue to hold a registration certificate, as the case may be. The hearing officer shall determine whether the denial or revocation was in accordance with this division and shall report its finding to the president within 21 days after the public hearing has been completed. Upon a review of the hearing officer findings and a determination that the application should be denied or certificate revoked, the president

shall issue a written finding stating the reasons for denial or revocation thereof and shall serve a copy of the findings upon the applicant or registrant and all parties appearing or represented at the hearing.
(d) If the applicant or registrant does not request a hearing or submit further evidence within ten days after receiving notification of the proposed denial or revocation, it shall be deemed that the applicant or registrant has conceded the validity of the reason stated in the notice, and the denial or revocation shall become final.
(e) Within three days after notification of a decision unfavorable to the applicant or registrant and all time for appeal in accordance with subsections (a) through (d) of this section having expired, the applicant or registrant shall:
(1) Peaceably surrender to the department of police the firearm for which the application was denied or the registration certificate was revoked;
(2) Remove such firearm from the town; or
(3) Otherwise lawfully dispose of his interest in such firearm.
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(f) The applicant or registrant shall submit to the director of public safety evidence of the disposition of unregisterable firearms in accordance with subsections (e)(2) and (e)(3) of this section. Such evidence shall be submitted on forms and in the manner prescribed by the director of public safety.
(Code 1958, § 38-35; Ord. No. 60-93A, § 1, 7-13-1993)

Sec. 62-272. Renewal.

(a) Every person registered under this division must renew his registration certificate every two years. Applications for renewal shall be made by such registrants 60 days prior to the expiration of the current registration certificate.
(b) The application for renewal shall include the payment of a renewal fee of $25.00.
(c) Failure to comply with the requirement for renewal of registration of a firearm shall cause that firearm to become unregisterable.
(d) All terms, conditions and requirements of this division for registration of firearms shall be applicable to renewal or registration of such firearms.
(Code 1958, § 38-43; Ord. No. 60-93A, § 1, 7-13-1993)

Sec. 62-273. Additional duties of registrant.

Each person holding a registration certificate issued under this division shall:
(1) Immediately notify the department of police on a form prescribed by the director of public safety of:
a. The loss, theft or destruction of the registration

certificate or of a registered firearm immediately upon discovery of such loss, theft, or destruction.
b. A change in any of the information appearing on the registration certificate.
c. The sale, transfer or other disposition of the firearm not less than 48 hours prior to delivery.
(2) Immediately return to the director of public safety his copy of the registration certificate for any firearm which is lost, stolen, destroyed or otherwise disposed of.
(3) Keep any firearm in his possession unloaded and disassembled or bound by a trigger lock or similar device, unless such firearm is in his possession at his place of residence or business or while being used for lawful recreational purposes within the town. However, this subsection shall not apply to law enforcement personnel as defined in section 62-256 and provided, further, this subsection shall not apply to security personnel as defined in section 62-256 while in the course of their employment.
(Code 1958, § 38-36; Ord. No. 60-93A, § 1, 7-13-1993)

Sec. 62-274. Exhibition of certificate.
(a) Any person carrying or having in his possession or under his custody or control any firearm shall have on his person or within his immediate custody a valid registration certificate for such firearm issued under this division, which shall be exhibited for inspection to any peace officer upon demand. Failure of any such person to so exhibit his registration certificate shall be
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presumptive evidence that he is not authorized to possess such firearm.

(b) Failure of any person to exhibit a registration certificate for any firearm in his possession, custody or control shall also be cause for the confiscation of such firearm and revocation of any registration certificate issued therefor under this division.
(Code 1958, § 38-37; Ord. No. 60-93A, § 1, 7-13-1993)

Sec. 62-275. Possession of ammunition.
No person shall possess ammunition in the town unless he is:
(1) A person exempted pursuant to section 62-260; or
(2) The holder of a valid registration certificate for a firearm of the same gauge or caliber as the ammunition possessed.
(Code 1958, § 38-38; Ord. No. 60-93A, § 1, 7-13-1993)
Sec. 62-276. Permissible sales and transfers of firearms and ammunition.
(a) No firearm may be sold or otherwise transferred within the town except through a licensed weapons dealer.
(b) No ammunition may be sold or otherwise transferred within the town except through a licensed weapons dealer as defined or as otherwise allowed by this Code.

(c) No firearm or ammunition shall be security for or be taken or received by way of any mortgage, deposit, pledge or pawn.
(d) No person may loan, borrow, give or rent to or from another person any firearm or ammunition except in accordance with this division.
(e) A peace officer may additionally sell or transfer any lawfully held firearm or ammunition to another peace officer in accordance with the other sections of this article.
(Code 1958, § 38-39; Ord. No. 60-93A, § 1, 7-13-1993)

Sec. 62-277. Compliance with firearm owners identification card act.
No person shall sell, give away or otherwise transfer any firearm, as defined in section 38-25, without complying with sections 3 and 3.1 of the Firearm Owners Identification Card Act, 430 ILCS 65/3 and 430 ILCS 65/3.1.

(Code 1958, § 38-40; Ord. No. 60-93A, § 1, 7-13-1993)
Sec. 62-278. Destruction of weapons confiscated.
(a) Whenever any firearm or ammunition is surrendered or confiscated pursuant to this division, the director of public safety shall ascertain whether such firearm or ammunition is needed as evidence in any matter.
(b) If such firearm or ammunition is not required for evidence, it shall be destroyed at the direction of the director of public safety. A record of the date and method of destruction and an inventory of the firearm or ammunition so destroyed shall be maintained.

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(Code 1958, § 38-45; Ord. No. 60-93A, § 1, 7-13-1993)
Secs. 62-279--62-305. Reserved.

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DIVISION 1. GENERALLY

Sec. 26-31. Required.

No person shall engage in or manage or operate any business, profession or occupation within the town unless a town license shall have been procured from the license officer. One license shall be issued to each person, upon receipt of the amount provided in this article and upon compliance with all sections of this Code pertaining to the license.

A minimum fine of $250.00 and a maximum fine of $750.00 shall be imposed for violations of this section. Additionally, any business operating without a license must immediately cease operation until the license required by this section is issued.

(Code 1958, § 22-1; Ord. No. 170-96, § 1, 12-10-1996; Ord. No. 263-03, § 1, 12-9-2003)